

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)
☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2024

OR
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission file number 001-39982

ENERGY VAULT HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)
4165 East Thousand Oaks Blvd., Suite 100
Westlake Village, California
(Address of Principal Executive Offices)

85-3230987
(I.R.S. Employer Identification No.)

91362
(Zip Code)

(805) 852-0000
Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	NRGV	New York Stock Exchange

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☒
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐
Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment on the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements . ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of voting stock held by non-affiliates of the registrant on June 28, 2024, based on the closing price of \$0.95 for shares of the Registrant's Class A common stock as reported by the New York Stock Exchange, was approximately \$98.1 million. Shares of common stock beneficially owned by each executive officer, director, and holder of more than 5% of our common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The registrant had 154,242,940 shares of common stock, par value \$0.0001 per share, outstanding as of March 28, 2025.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K incorporates certain information by reference from the definitive proxy statement for the registrant's 2025 annual meeting of stockholders to be filed within 120 days of the registrant's fiscal year ended December 31, 2024, or the Proxy Statement. Except with respect to information specifically incorporated by reference in this Annual Report on Form 10-K, the Proxy Statement is not deemed to be filed as part of this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties, and other important factors that are in some cases beyond our control and may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- changes in our strategy, expansion plans, customer opportunities, future operations, future financial position, estimated revenues and losses, projected costs, prospects and plans;
- the implementation, market acceptance and success of our business model and growth strategy;
- our ability to develop and maintain our brand and reputation;
- developments and projections relating to our business, our competitors, and industry;
- the impact of macroeconomic uncertainty, including with respect to uncertainty about the future relationship between the United States and other countries with respect to trade policies, taxes, government regulations, and tariffs;
- investment in development projects that may not achieve commercial operations in our predicted timeframe or at all;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- expectations regarding the time during which we will be an emerging growth company under the JOBS Act;
- our future capital requirements and sources and uses of cash;
- the international nature of our operations and the impact of war or other hostilities on our business and global markets;
- our ability to obtain funding for our operations and future growth; and
- our business, expansion plans and opportunities, including our expectation that our first two-owned projects will begin generating revenue in 2025.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Annual Report on Form 10-K primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section titled “Risk Factors” and elsewhere in this Annual Report on Form 10-K. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report on Form 10-K. The results, events and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements. Additionally, our discussions of environmental, social, and governance (“ESG”) assessments, goals and relevant issues herein or in other locations, including our corporate website, are informed by various ESG standards and frameworks (including standards for the measurement of underlying data), and the interests of various stakeholders. References to “materiality” in the context of such discussions and any related assessment of ESG “materiality” may differ from the definition of “materiality” under the federal securities laws for SEC reporting purposes. Furthermore, much of this information is subject to assumptions, estimates or third-party information that is still evolving and subject to change. For example, we note that standards and expectations regarding greenhouse gas (“GHG”) accounting and the process for measuring and counting GHG emissions and GHG emissions reductions are evolving, and it is possible that our approaches both to measuring our emissions and any reductions may be at some point, either currently or in the future, considered not in keeping with best practices. In addition, our disclosures based on any standards may change due to revisions in framework requirements, availability or quality of information, changes in our business or applicable government policies, or other factors, some of which may be beyond our control.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Annual Report on Form 10-K. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements. Any forward-looking statements only speak as of the date of this document, and we undertake no obligation to update any forward-looking information or statements, whether written or oral, to reflect any change, except as required by law. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

PART I

ITEM 1. BUSINESS

Organization

Energy Vault Holdings, Inc., (together with its subsidiaries “Energy Vault” or the “Company”) was originally incorporated under the name Novus Capital Corporation II (“Novus”) as a special purpose acquisition company in the state of Delaware in September 2020 with the purpose of effecting a merger with one or more operating businesses. On September 8, 2021, Novus announced that it had entered into a definitive agreement for a business combination (the “Merger Agreement”) with Energy Vault, Inc. (“Legacy Energy Vault”) that would result in Legacy Energy Vault becoming a wholly owned subsidiary of Novus (the “Merger”). Upon the closing of the Merger on February 11, 2022 (the “Closing”), Novus was immediately renamed to “Energy Vault Holdings, Inc.”

Throughout this Annual Report, unless otherwise noted, the “Company,” “we,” “us,” or “our” and similar terms refer to Legacy Energy Vault and its subsidiaries prior to the consummation of the Merger, and Energy Vault and its subsidiaries after the consummation of the Merger.

Mission

Our mission is to provide energy storage solutions to accelerate the global transition to renewable energy.

About Us

Energy Vault provides a diverse technology portfolio of turnkey energy storage platforms, including proprietary gravity, battery, and green hydrogen energy storage hardware technologies, supported by our technology-agnostic energy management system software and integration platform. In 2024, we began a multi-year transition from providing this technology portfolio solely to third parties through a build-and-transfer model or licensing model, to also taking an ownership interest in energy storage assets in select attractive markets. We believe that our experience in the build-and-transfer business, combined with our proprietary energy storage technologies and geographical footprint, uniquely positions us to build and operate storage projects with superior efficiency and reliability.

We incorporate a customer-centric, solutions-based approach toward helping utilities, independent power producers (“IPP”), and large industrial energy users reduce their energy costs while maintaining power reliability. As the global demand for electricity increases and the world transitions to an economy powered by increasingly intermittent renewable energy such as solar and wind, the ability to provide clean, reliable, and affordable electricity to a growing global population will depend heavily on the ability to store and distribute energy at appropriate times. We are striving to create a world powered by renewable resources so that everyone will have access to clean, reliable, sustainable, and affordable energy.

Build, Own, and Operate Projects

We expect that our first two owned projects will begin generating revenue in 2025.

Our Calistoga Resiliency Center is the world’s first utility-scale hybrid hydrogen fuel cell and lithium-ion battery microgrid. We designed the Calistoga Resiliency Center in cooperation with the City of Calistoga and Pacific Gas & Electric (“PG&E”) to provide zero-emission reliable power during public safety power shutoff (“PSPS”) events caused by elevated wildfire risks. In the past, PG&E provided power to Calistoga during PSPS events through diesel generators that produced significant air emissions and noise pollution. The Calistoga Resiliency Center will provide 8.5MW of power at peak capacity with a 48-hour duration with the only byproduct being clean water. This unique hybrid model enables quick black-start capabilities and can be re-fueled while operational for longer duration service. Initially, revenue will be generated through a contract with PG&E to provide backup power to Calistoga for PSPS events or when requested. After the facility comes online, we intend to sell power into the CAISO energy and ancillary services market as an IPP for additional revenue. We are currently negotiating agreements and seeking regulatory approvals to provide these merchant power services.

In 2025, we also expect to begin commercial operations on our Cross Trails Battery Energy Storage System (“Cross Trails”) in Scurry County, Texas. We began construction on Cross Trails in 2024 and also signed a 10-year offtake agreement with Gridmatic, a leading AI-enabled power marketer. The Cross Trails project will service the ERCOT region Day Ahead market with improved grid resiliency. When completed, Cross Trails is designed to provide 57MW of power with a 2-hour battery capacity for peak demand periods in ERCOT. Cross Trails utilizes our proprietary B-Vault PLTF-2 batteries and our Vault-OS software package. We believe that Cross Trails will maintain full operational capability at low operational costs while requiring low maintenance capital expenditures over its useful life.

We are actively discussing projects with public sector and private developers in many markets to expand our owned project portfolio, including those in the U.S., Australia, and Italy.

Sale of Energy Storage Products

Our diversified portfolio of storage solutions are designed to enhance grid stability and improve overall efficiency of the grid.

Once energy is stored in our solutions, it can be discharged to the grid in a controlled and reliable manner at any time, regardless of the then current ability of the generation assets to provide power. Our energy storage solutions are designed to accommodate a wide variety of power sources and to achieve an attractive levelized cost of energy relative to fossil fuels. Collectively, these abilities greatly broaden the use cases and time duration scenarios that can be addressed by certain sources of renewable power and provide backup capacity for fossil fuels.

Our solutions include:

- **B-Vault:** Our electrochemical battery energy storage solution (“BESS”) that meets short-duration energy storage needs, typically, in the range of one to four hours. Our B-Vault solution is designed to utilize purpose-built battery and inverter systems with an innovative architecture that lowers costs, improves performance, and promotes project safety. Our B-Vault solution is a suite of fully integrated battery energy storage equipment designed for reliability, flexibility, and availability. We believe electrochemical battery energy storage (inclusive of lithium-ion, flow, metal air, and other battery chemistry technologies) is currently the most widely accepted and fastest growing technology for short-duration energy storage applications.
- **B-Nest:** Our proprietary multi-story structure designed to house batteries for onsite energy storage serving space-constrained project sites. Our B-Nest solution is capable of storing up to 1.6 GWh of energy per acre, which represents an 8X increase in installed site energy density over a traditional ground-mounted battery energy storage system (“BESS”). As of December 31, 2024, the Company is in active discussions with a number of potential customers, along with fire departments and other permitting bodies about our B-Nest solutions to ensure market acceptance.
- **G-Vault:** Our proprietary gravity energy storage solutions (“GESS”) are designed to meet long-duration energy storage needs, typically, in the range of four to twelve hours. G-Vault solutions leverage the core, proven energy storage technology of pumped hydroelectric storage, while not being constrained by the same geological factors of pumped hydroelectricity. Today, the Company offers a suite of gravity energy storage solutions utilizing multiple approaches, including moveable masses or modular pumped hydro. Heretofore, the Company has largely commercialized this technology and associated material science through the use of licenses, but the Company is also exploring the use of partnership models for co-development and technology deployment.
- **H-Vault:** Our hydrogen or hybrid energy storage solutions (“HESS”), including systems that integrate hydrogen, are designed to meet customer specific energy storage needs. For example, our H-Vault solutions when combined with B-Vault solutions, enable ultra-long-duration energy storage needs and provide black start and grid forming capabilities for communities supported by microgrids or other critical infrastructure. H-Vault supports community-scale microgrid generation that can be less carbon-intensive than using diesel-fueled generators for emergency backup power. For example, hydrogen is produced via electrolysis and powered by renewable energy, which does not directly emit carbon emissions when used to store energy for long periods of time.
- **Software Solutions:** Our proprietary software solutions offer technology-agnostic management systems designed to maximize the economic and environmental value of energy generation and storage assets. Our software incorporates artificial intelligence, predictive analytics, and software optimization algorithms to provide our customers with efficient and profitable operation of their power generation assets. Our software solutions include:
 - **Vault-OS Energy Management System (“EMS”):** Our EMS manages one or more of our diverse energy storage mediums and the underlying generation assets to optimize the delivery of power to our customers for their varied and multiple use cases.
 - **Vault-Bidder:** Vault-Bidder utilizes machine learning algorithms to match node-specific data with real-time weather and asset performance information to generate tailored load, generation, dispatch, and price forecasting across all assets.
 - **Vault-Manager:** Vault-Manager incorporates a forward-looking design to safeguard asset management and to help blend developing technologies seamlessly into existing solutions.

Industry Overview

The utility-scale energy storage industry is increasing at a rapid pace, driven by increased demand for electricity, global transitions toward renewable energy, and increased focus on grid resilience.

According to a report from the U.S. Department of Energy in December 2024, electricity demand is forecasted to grow substantially in the United States over the next few decades. Electricity demand is expected to be driven primarily by new data centers, artificial intelligence, new manufacturing facilities, electric vehicles, and sector-wide electrification. Electricity demand for data centers alone is expected to grow at a 13% to 27% compound annual growth rate through 2028.

Over the past decade, deployment of renewable energy resources has accelerated and there has been an industry-wide push for decarbonization, which is increasing the demand for grid-scale energy storage. A major obstacle to transitioning to renewable sources of energy such as wind and solar is the intermittent availability of these types of energy sources. Energy storage solutions are needed to balance the production intermittency of variable renewable energy to support a clean-energy future and a balanced electrical grid infrastructure. Both government mandates and companies focused on reducing energy use, cost, and emissions are expected to propel the shift to renewable sources of power.

Additionally, software solutions play a vital role in assisting energy storage owners in managing the growing complexities of renewable energy and energy storage markets. As renewable and energy storage asset portfolios expand globally, these stakeholders will need software solutions that enhance asset performance and boost revenue while reducing total ownership costs.

Our expansion of revenue depends on the ongoing adoption of energy storage solutions by our customers and our ability to source, execute, and operate energy storage projects with attractive economics. The growth of the energy storage market that we address is primarily driven by the decreasing cost of energy storage technologies, government mandates, financial incentives to reduce GHG emissions, and efforts to enhance grid stability and efficiency. These dynamics are driving demand for increased energy storage capacity and duration.

Governments in countries throughout the world have announced and implemented various policies, regulations, and legislation to support the transition from fossil fuels to low-carbon form of energy, including through the use of energy storage solutions. For example, in August 2022, the United States Congress passed the Inflation Reduction Act (“IRA”). The IRA provides incentives for the domestic manufacturing of key components of energy storage solutions as well as the construction of standalone energy storage projects. The resulting improved economics are expected to reduce the cost to implement storage within the domestic market and may amplify and accelerate the adoption of energy storage systems for short, long, and extended duration use cases, like those offered by Energy Vault. Such government policies and programs are becoming increasingly instrumental in stimulating adoption of energy storage solutions across different markets through a variety of methods, including by providing financial support, facilitating grid integration, and supporting research and development. To the extent that any existing government incentives are reduced, eliminated, or are permitted to expire, there may be adverse effects on customer demand and our business, including as a result of the change in the U.S. presidential administration.

We believe we are well-positioned to capitalize on this opportunity through our competitive pricing and scalability, and the environmentally friendly attributes of our energy storage solutions that cover the spectrum from short durations to extended durations.

Strategy, Strengths, and Differentiation

We leverage our sustainable and differentiated technologies to provide economical solutions to meet short, long, and extended-duration energy storage needs through ownership of assets or through sales of our energy storage products. Our energy storage solutions are designed to accommodate a wide variety of power sources and to achieve an attractive levelized cost of energy relative to fossil fuels.

We anticipate that our market will be characterized by high growth and rapidly evolving use cases and requirements. We believe that the majority of our competitors are primarily focused on the development and marketing of vertically siloed solutions based on a singular energy storage technology. Alternatively, we have strategically chosen to design an agile and agnostic software platform that can orchestrate the management of not just one energy storage technology, but rather one or more of our diverse storage mediums and the underlying power generation assets to harmonize asset operation and drive competitive operational performance. We expect that this will broaden the use cases and time duration scenarios that can be addressed by certain sources of renewable power, and thereby drive a faster transition to more widespread utilization of renewable power, as well as provide reliable additional power during peak demand periods or generation outages.

Our range of energy storage solutions provides alternatives to our customers to have what they need today, as well as what they will need in the future, thereby protecting their investments in our products within this high-growth market and its

rapidly evolving use cases and requirements. For these reasons, we believe we are well positioned to compete successfully in the evolving market for energy storage solutions.

Own and Operate Asset Site Selection and Investment Criteria

We have developed well-defined investment criteria to quickly and efficiently deploy capital into attractive projects on a discretionary basis. We look at a variety of factors when evaluating projects to own, including market attributes, project attributes, development status, and project economics. Factors we look at include, jurisdiction-specific risks and government mandates, capacity and duration, permitting, interconnection, offtake and merchant opportunities, and the availability of government subsidies and tax credits. Our third-party energy storage sales also allow us to work with our customers to share in their project economics through a FlexIPP program, which entails minority ownership stakes in customer projects, in addition to providing traditional third-party project services and turnkey technology solutions.

Third-Party Project Delivery

We primarily rely on two models for third-party project delivery, which are (i) engineering, procurement, and construction (“EPC”) delivery and (ii) engineered equipment (“EEQ”) delivery. Under the EPC model, we generally rely on third-party EPC firms to construct our storage systems, under our supervision with dedicated teams tasked with project management. Under the EEQ model, we are responsible for the delivery of the equipment we provide, as well as resolving issues within our scope of supply.

Business Model

As a result of our flexibility to own assets or deliver energy storage products to third parties, our current business model options include:

- Selling energy storage products to third-parties, including constructing and delivering fully operational energy storage systems under an EPC model and delivering energy storage equipment under an EEQ model;
- Building, operating, and holding energy storage systems as equity (co-) sponsor that may provide recurring revenue in the future;
- Taking a minority stake in an energy storage project where we provide EPC, EEQ, or long-term services, allowing us to participate in the project’s long-term economics while strengthening alignment with strategic customers;
- Recurring software revenue through licensing software for asset management and use case applications;
- Recurring service revenue through long term service agreements, and;
- Intellectual property licenses and royalties associated with our energy storage technologies that may provide recurring revenues in the future.

Manufacturing and Customer Support

Our manufacturing, assembly, and construction model is designed to support rapid growth, local jobs, and global execution.

The components of our B-Vault, B-Nest, and H-Vault solutions are primarily off-the-shelf in nature and can be procured from multiple sources worldwide. Some of the power components used in these solutions are common and we strive for economies of scale when appropriate. We typically procure batteries at either the cell, module, or rack level, and then use other contractors to integrate and assemble the batteries into outdoor enclosures that are then shipped to the project site.

The physical structure of our gravity energy storage solutions is based on our novel designs with many of the components manufactured by suppliers uniquely for us. Some of these components are made at the supplier’s factories, while some are made closer to, or at, the project site itself. Most of the electrical system components are off-the-shelf in nature and can be procured from multiple sources worldwide.

In an EPC arrangement, construction at project sites typically involves establishing regional and country level infrastructure to support local deployments through a contracting model.

We provide our customers with limited assurance warranties to ensure our products are free of defects. We provide maintenance, customer support, and repair services for the entire storage system, including performance of regular preventative maintenance and software upgrades when appropriate if our customers enter into long-term service arrangements.

Supply Chain

We proactively maximize our beneficial involvement in key aspects of the global, domestic, regional, and local supply chains that support our solutions. Through our extensive supply chain procurement process, we aim to deliver our customers a thoroughly vetted and secure source of integrated components for their energy storage needs. Given our technology-agnostic approach, we can procure equipment from a variety of top-tier global suppliers without reliance on a single-source company or geography.

The market our suppliers serve is highly impacted by government legislation. As such, we continue to proactively monitor planned and/or enacted legislation in the countries and regions that we serve. When new legislation is enacted, we seek to find ways to utilize the legislation to reduce our cost to obtain energy storage components. This includes the IRA that was passed in the United States for manufacturing and project incentives, and the potential reactionary legislation to follow in response elsewhere in the world. There are also increasing government regulations regarding companies' supply chains, including certain import or other restrictions on the use of various suppliers or materials/products from certain regions. This exposes Energy Vault to changes in international trade regulations, taxes, tariffs, and/or quotas, and there is uncertainty about the future relationship between the United States and other countries with respect to trade policies, taxes, government regulations, and tariffs with the change in the U.S. presidential administration, including with respect to steel. For more information about our potential risks relating to our supply chain and exposure to international pressures, see Part I, Item 1A. "Risk Factors."

Marketing and Sales

We believe that our marketing strategy positions us as a leadership brand and a respected and sought-after long-term strategic partner that will contribute to our customers' growth and profitability. Our marketing strategy includes the following:

- *Brand Visibility, Awareness, and Education:* Through branding and web marketing, we communicate with a broad set of stakeholders and work to establish leadership expertise to lay the foundation for qualified customer and supplier interaction.
- *Drive Demand:* Our corporate outreach strategy is designed to drive demand for lead generation. We work to achieve this through web marketing and initiatives designed to accelerate the customer adoption process.

To achieve this, we employ the following:

- *Integrated Marketing:* We take a targeted approach to strategic integrated marketing campaigns that are designed to maximize available budget while elevating our voice within the marketplace, generate leads, and close deals.
- *Lead Generation Model:* Our campaigns are designed to drive "a call to action" on our website to capture leads. We also engage in a range of other traditional marketing activities such as tradeshows and events, internal / partner sources, and various digital marketing activities such as website, search engine optimization, social media integration, online events, and forums.
- *Sales Model:* Our sales model focuses on winning large and sophisticated energy storage projects where the customers and their use cases demand, and benefit from, the agility of our solutions and organization to provide them with the best-fit for their project requirements today and well into the future. Given this sales model, we focus on high growth geographical regions.

While we have global coverage, our primary geographical focus for our B-Vault business is North America and Australia, with less emphasis today on Europe and Southeast Asia. Meanwhile, our current geographic focus for our G-Vault business is centered around those areas in which we have signed existing license and/or royalty agreements. We have established offices and presence in all of these regions. We have also reached out beyond these regions via a network of representatives and we intend to continue to grow and staff both direct and indirect channels in the future. We offer our customers a range of options on how we transact with them. We believe the flexibility we offer our customers further amplifies the value we bring to them.

Target Customers

Our target customers include independent power producers, government organizations, utilities, grid operators, as well as industrial and commercial organizations with sizeable electricity needs. Because of the unique advantages of our solutions-based approach that offer maximum optionality through its agnostic nature and agile architecture, we believe there is significant demand for our systems to help address the accelerating growth and needs of the global energy storage market.

Competition

We expect competition in energy storage technology to intensify due to a regulatory push for lower-carbon energy sources such as wind and solar, continuing globalization, and consolidation in the energy industry. We believe that the principal competitive factors in the energy storage market include:

- levelized cost of energy delivered;
- safety, reliability, and quality;
- product performance;
- historical track record and references for customer satisfaction;
- experience in utilizing the energy storage system for multiple stakeholders;
- innovation across a variety of technologies;
- comprehensive solution from a single provider;
- ease of integration; and
- seamless hardware and software-enabled service offerings.

Our key competitors within the shorter duration BESS market include Tesla, Inc., Fluence Energy, Inc., Powin Energy Corp., FlexGen Power Systems, Inc., and Sungrow Power Supply Co Ltd. Within the longer duration energy storage market there are system manufacturers with products in various states of viability utilizing various technologies including ESS Inc., Eos Energy Enterprises Inc., Hydrostor Inc., Primus Power, Form Energy, Inc., Gravitricity Ltd., and other solid-state battery manufactures.

Some of our current and potential competitors have longer operating histories and greater financial, technical, marketing and other resources than we do. These factors may allow our competitors to respond more quickly or efficiently than we can to new or emerging technologies.

These competitors may engage in more extensive research and development efforts, undertake more far-reaching marketing campaigns, and adopt more aggressive pricing policies, which may allow them to more effectively compete for new energy storage projects.

Intellectual Property (“IP”)

We rely on a combination of patent, trademark, copyright, unfair competition, and trade secret laws, as well as confidentiality procedures and contractual restrictions with our employees, contractors and third parties, to establish, maintain, and protect our proprietary rights. Our success depends in part upon our ability to obtain, maintain, and enforce proprietary protection for those aspects of our technology that provide us with a competitive advantage, to operate without infringing the proprietary rights of others, and to prevent others from infringing our proprietary rights.

We have developed a patent portfolio to protect certain elements of our proprietary technology. As of December 31, 2024, we had 25 issued patents and 25 patent applications pending in the U.S. Outside the U.S., we have 21 issued patents and 171 patent applications pending in other countries throughout the world. We have nine Patent Cooperation Treaty (“PCT”) patent applications pending. Our issued patents are expected to start expiring in 2039.

We primarily rely on copyright, trade secret laws, confidentiality procedures and contractual restrictions to protect our software. We also pursue the registration of our domain names and trademarks and service marks in the United States and internationally. As part of our overall strategy to protect our IP, we may take legal actions to prevent third parties from infringing or misappropriating our IP or from otherwise gaining access to our technology.

Government Regulation and Compliance

Federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. These statutes and regulations directly affect our owned asset business and indirectly affect our third-party sales business. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. In the United States, governments continuously modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different rates for commercial customers on a regular basis. These changes could affect our ability to deliver cost savings to our current and future customers for the purchase of electricity.

Each of our owned installations or our customer installations must be designed, constructed, and operated in compliance with applicable federal, state and local regulations, codes, standards, guidelines, policies, and laws. To install and operate

energy storage systems on its platform, we, our customers or our partners, as applicable, are required to obtain applicable permits and approvals from local authorities having jurisdiction to install energy storage systems and to interconnect the systems with the local electrical utility.

Energy storage systems typically require interconnection agreements from the applicable local electricity utilities in order to operate. In almost all cases, interconnection agreements are standard form agreements that have been pre-approved by the local public utility commission or other regulatory body with jurisdiction over interconnection agreements. As such, no additional regulatory approvals are typically required once interconnection agreements are signed.

Our operations are subject to stringent and complex federal, state and local laws, and regulations governing the occupational health and safety of our employees and wage regulations. For example, we are subject to the requirements of the federal Occupational Safety and Health Act, as amended, and comparable U.S. state laws that protect and regulate employee health and safety.

There are government regulations pertaining to the disposal of hazardous materials. We and our suppliers, as applicable, are required to comply with these regulations to operate our systems or to sell our systems into the market.

U.S. Energy Storage Regulation and Legislation

The U.S. Congress is continuously reviewing and passing various climate change proposals, incentives, regulations, and legislation that may support the energy storage industry, including in the form of tax credits and incentives. The implementation of these laws can vary greatly across administrations and take long periods of time before the full extent of regulations are adopted. We cannot guarantee we will realize any or all of the anticipated benefits or incentives under any such enacted regulations or legislation, including the IRA. Internal Revenue Service ("IRS") private letter ruling 201809003 clarified that energy storage is eligible for federal tax credits if charged primarily by qualifying renewable resources.

The IRA adopted in August 2022 contains a number of tax incentive provisions that directly support the adoption of energy storage solutions and services. Before the enactment of the IRA, the Section 48 Investment Tax Credit ("ITC") did not apply to standalone energy storage projects. The IRA added Section 48(a)(3)(A)(ix) to allow a taxpayer that placed in service a standalone energy storage technology with a minimum capacity of 5 kWh to claim the ITC, if certain requirements are met. Energy storage technology that is placed in service after December 31, 2022 and started construction for U.S. federal income tax purposes prior to January 1, 2025, may claim the ITC under Section 48(a). To qualify for the full ITC rate of 30%, an energy storage project will need to satisfy certain labor requirements relating to the payment of prevailing wages and use of apprentices, or have started construction for U.S. federal income tax purposes prior to January 29, 2023. If these requirements are not met, the project may be eligible only for a base rate of 6%. The existing energy ITC will be replaced by a Clean Electricity Investment Tax Credit (CEITC) or "tech neutral" regime, which is available for any investment in a qualified storage facility that is placed in service after calendar year 2024 (certain labor requirements will still apply). The IRA also included bonus credits associated with the ITC, which may be relevant to our business. There is a 10% bonus credit for projects located in certain areas designated as energy communities, an additional 10% bonus credit for projects utilizing products which collectively meet certain minimum domestic content requirements, and a 10% or 20% bonus credit for certain projects less than 5 MW located in a low-income community or that serve low-income community members. Finally, the IRA included a manufacturing production tax credit for specific renewable energy and battery storage related products and components manufactured in the U.S.

We believe we may be positioned to benefit from the bonus credits related to the energy storage systems we intend to own and operate and will stimulate demand for our customers to invest in more energy storage systems. To date, the IRA regulations, proposed regulations and/or guidance issued by the U.S. Department of Treasury and Internal Revenue Service associated with these various tax credits, including but not limited to the ITC, domestic content bonus credit, energy community bonus credit, and manufacturing production tax credit have provided some substantive clarity. However, we are continuing to seek additional clarity on certain aspects of IRA guidance and/or regulation via updated guidance and future proposed and/or final regulations. The potential impact from the change in the U.S. presidential administration to any existing regulations, including any potential ramifications for the IRA and the various tax incentive provisions as well as other government and tax incentives for clean energy and energy storage in the United States, is uncertain at this stage. Some of the guidance and rulemaking enacted under the Biden Administration could be changed or modified by the Trump Administration, creating uncertainty with respect to implementation of the IRA. It remains uncertain whether Congress will modify or repeal the IRA in connection with the budget reconciliation process or otherwise. Accordingly, no assurance can be given that our projects will be eligible for tax credits or other benefits under the IRA.

Finally, recent U.S. tariff policy changes may impact our business and results of operations. The Section 301 tariff rate on lithium-ion non-EV batteries imported from China has been amended several times since the beginning of 2025 and may continue to change. These changes specifically target "batteries" as defined by U.S. Customs and Border Protection,

encompassing the cubes, modules, and certain types of cells. The tariff rate on battery "parts"—including separators, electrolytes, cans, and electrodes is expected to remain at its current 25% level.

There is currently much uncertainty relating to potential changes to U.S. tariff policy. In particular, the U.S. government's recent imposition on tariffs on all imported steel may increase our costs. Changes to U.S. tariff policy may adversely impact our supply chain as well as our supply chain strategies detailed herein, both domestically and internationally, which may then have an adverse impact on our results of operations and business.

Environmental, Social, and Governance

Energy Vault is committed to sustainability as reflected in our core mission, our focus on sustainable business management practices, and our dedication to sustainable production design and supply chain management. Our sustainability directive is to enable a renewable world through the implementation of sustainable business practices that will ultimately yield a positive impact on the environment. We respect our business relationships and strive to be a responsible partner to our suppliers and customers around the world.

In 2024, the Company received a corporate sustainability assessment score of 68 (out of 100) as reported in the 2024 S&P Global Environmental, Social, and Governance (ESG) Ratings, ranking Energy Vault in the 98th percentile in the industry. The three key pillars of the Company's sustainability strategy are (i) Purpose, (ii) Products, and (iii) Partnerships.

Purpose

The Company aims to embed sustainable business management strategies across departments within the organization and to infuse our ESG philosophy throughout our business operations, product development, and accountability reporting. The Company's Sustainability Team works to develop sustainable business management strategies for the organization through an evaluation of Company operations and by implementing monitoring and reporting systems to track and improve all areas of impact. The Sustainability Team works with the Company's business units to implement an "environment first" approach to key operational processes, including reporting and disclosure frameworks, environmental policy compliance, professional education, and other key support processes for innovation and responsible development.

The Company has a Sustainability Task Force to help encourage interdepartmental collaboration and cross-functional support in an effort to embed sustainability into the nucleus of our employee's behavior. The Sustainability Task Force is responsible for setting and communicating sustainability metrics, goals, and performance in addition to coordinating internal and external sustainability-related communications such as the annual Sustainability Report.

Products

Offering high-quality products that provide environmental benefits is the key to delivering energy storage solutions of which we can be proud. The foundation for the successful delivery of our energy storage solutions starts with quality and environmental management systems that are globally recognized and accepted. As part of delivering quality products, Energy Vault is certified to Internal Organization for Standardization ("ISO") 9001, a quality management standard that promotes a commitment to customer satisfaction, purpose-driven leadership, and equitable involvement for all employees. In addition, our commitment to improving the environment is demonstrated by our certification of the ISO 14001 standard, which requires an organization to implement and demonstrate compliance with an effective environmental management system to identify and control the environmental impact of its activities, products, and services; continually improve environmental performance; and implement a systematic approach to setting environmental objectives and targets.

We demonstrate our commitment to resource preservation and environmental impacts by investing resources into the research and development of low carbon, innovative materials and construction practices. We have performed several material science projects to reduce the carbon content of materials, introduce the use of waste materials in our mobile masses for gravity energy storage, help understand end-of-life management for our energy storage solutions, and help contribute to a circular economy. To date, we have completed lifecycle assessments on G-Vault and B-Vault solutions based on ISO 14040 standards, and we plan to conduct life cycle assessments on other energy storage system technologies as they are developed.

Partnerships

The Company believes that strong partnerships are a key to our success. Our partnerships are aligned with a shared pursuit to accelerate the decarbonization of our planet, which includes incorporating considerations from standards and sustainability frameworks such as those from the ISO, Global Reporting Initiative ("GRI"), United Nations ("UN"), Science Based Targets initiative ("SBTi"), and Task Force on Climate-related Financial Disclosures ("TCFD"). We joined the UN Global Compact and participated in their accelerators to engage with like-minded global businesses to better align with the UN Sustainable Development Goals. We have announced emissions reduction goals and had our near-term emissions reduction targets for Scope 1 & 2 emissions validated by SBTi. We continue to complete the Corporate

Sustainability Assessment with S&P Global and we will work closely with our vendors and partners to evaluate and assess components and materials for a chain of custody that identifies responsible and ethical sourcing, environmental product declarations, and end-of-life solutions. For example, we have partnered with Cemex to reduce carbon content and test remediated waste in our G-Vault mobile masses and have created relationships with institutes of higher learning.

ESG Conclusion

Maintaining an environment of transparency and accountability allows us to share our passions and commitments with all of our stakeholders. Our strong dedication to transparency with respect to sustainability and ESG is reflected by our plan to publish annual Sustainability Reports, which can be accessed on our website, and which reports and other information on our website are explicitly not incorporated into this filing by reference.

Human Capital Management

At Energy Vault, we place immense value on our workforce, recognizing their critical role in our success. We are committed to fostering a positive, equitable, and secure work environment. In our pursuit of transparency, we look to engage in regular communication with our employees through various channels, including emails and all-hands meetings, to promote clear and open dialogue between the executive leadership team and the entire organization.

Employees

As of December 31, 2024, we employed 158 full-time employees and five part-time employees, distributed across six different countries. None of our employees are represented by a labor union or collective bargaining agreement. We have not encountered any employment-related work stoppages, and we believe we maintain strong relations with our employees.

Culture and Engagement

Energy Vault continued providing a comprehensive series of workshops in 2024, known as the Energy Vault Way Culture Series. These workshops focused on effectively communicating Energy Vault's purpose, vision, mission, and values, with a specific emphasis on nurturing a culture of recognition and continuous feedback. To enhance these initiatives, we also introduced the Culture Corner in 2024, providing employees with additional resources to support the topics covered in the Energy Vault Culture workshops.

Compensation and Benefits

We offer our employees comprehensive and competitive compensation and benefits, and we strive to support our employees in all aspects of their lives. Our compensation programs are designed to reinforce our growth agenda and our talent strategy, as well as to drive a strong connection between the contributions of our employees and their compensation.

We believe our compensation packages provide the appropriate incentives to attract, retain, and motivate our employees. We provide base pay that is competitive and that aligns with employee positions, skill levels, experience, and geographic location. In addition to base pay, we seek to reward employees with annual incentive awards and equity awards.

We also offer competitive employee benefits packages, which vary by country and region. These employee benefit packages may include: 401(k) plan, pension plan, core and supplemental life insurance, medical and dental insurance, vision insurance, health savings accounts, vacation pay, holiday pay, and parental leave.

Corporate Information

We file or furnish periodic reports and amendments thereto, including our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K, proxy statements, and other information with the Securities and Exchange Commission ("SEC"). In addition, the SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically. Our website is located at <http://energyvault.com> and our reports, amendments thereto, proxy statements, and other information are also made available, free of charge, on our investor relations website at <http://https://investors.energyvault.com> as soon as reasonably practicable after we electronically file or furnish such information with the SEC. The information posted on our website is not incorporated by reference into this Annual Report or any of our other securities filings unless specifically incorporated herein by reference.

ITEM 1A. RISK FACTORS

Certain factors may have a material adverse effect on our business, financial condition, results of operations, and prospects. You should carefully consider the risks and uncertainties described below, as well as the other information in this Annual Report, including our consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The occurrence of any of the events or developments described below, or of additional risks and uncertainties not presently known to us or that we currently deem immaterial, could materially and adversely affect our business, results of operations, financial condition, and prospects. In such an event, the market price of our securities could decline, and you could lose all or part of your investment.

Risk Factor Summary

Below is a summary of the principal factors that make an investment in our common stock speculative or subject to risk. This summary does not address all of the risks facing our business. You should consider the risks in this summary together with the detailed discussion of risks that immediately follows this summary in this section titled "*Risk Factors*," as well as the other information in this Annual Report on Form 10-K.

- Our limited operating history and our rapidly evolving industry make it difficult to evaluate our business, the risks and challenges we may face, and future prospects.
- The engineering of our systems is in continuous refinement to improve system cost and efficiency. There is no guarantee that we will be successful in implementing all improvements under the expected schedule.
- Changes to United States tariff and import/export regulations.
- Our systems' performance may not meet our customers' expectations or needs.
- There is no assurance that non-binding letters of intent and other indications of interest, including awards, submitted proposals or short-lists, will result in binding orders or sales. Customers may cancel or delay the non-binding letters of intent and other indications of interest in our sales pipeline. As a result, our operating results and cash flows may be materially lower than our expected results of operations.
- The failure or inability of our suppliers to deliver necessary components or raw materials for construction of our energy storage systems and their failure or inability to deliver them in a timely manner or to the quality standards required, could cause installation delays, cancellations, penalty payments and damage to our reputation.
- Our business is subject to risks associated with construction, cost overruns and delays, including those related to obtaining government permits and approvals, electrical interconnection, and other contingencies that may arise in the course of completing installations.
- Our B-Vault, B-Nest, G-Vault and H-Vault products are based on established principles that are deployed in a novel way to create new technologies to store energy and potential customers may be hesitant to make a significant investment in our technology or abandon the technology they are currently using.
- Material weaknesses in our internal control over financial reporting could have a significant adverse effect on our business and the price of our common stock.
- We are an early-stage company with a history of losses, and expect to incur significant expenses and continuing losses for the foreseeable future, and we may not be able to achieve profitability in the future.
- Our total backlog, bookings, and developed pipeline may not be indicative of our future revenue, which could have a material adverse impact on our business, financial condition, and results of operations.
- Our developed pipeline of awarded or shortlisted third-party EPC, EEQ, and long-term service opportunities, and the long-term economics associated with potential projects identified for our own and operate portfolio, may be subject to change and be impacted by anticipated equipment and commodity costs, tariffs, as well as changes in foreign currency exchange rates in markets in which we source materials or conduct business.
- As we conduct business in a host of geographies and may engage in activity with those operating sensitive energy infrastructure, including markets subject to capital controls, our ability to collect payments or conduct business may be impacted or change without advance notice.
- Our energy storage products involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis it could harm our business. Moreover, the long sales cycles for our energy storage products may cause us to incur significant expenses without offsetting revenues.

- Our owned projects are based on our estimates of construction costs, timelines, future revenues, and operating costs. If those estimates are inaccurate, our anticipated revenues and profits may be materially and adversely effected.
- Our systems include complex software and technology systems and do not have a meaningful history of operation, and there can be no assurance such systems and technology will perform as expected or that software, engineering or other technical defects will not be discovered until after a system is installed and operated by a customer or by us. If our energy storage systems contain manufacturing or construction defects, our business and financial results could be harmed. In addition, the development and updating of these systems will require us to incur potentially significant costs and expenses.
- If any of our products are or are alleged to be defective in design or manufacturing or experience other failures, we may be compelled to undertake corrective actions, which could adversely affect our business, prospects, operating results, reputation and financial condition.
- If we fail to protect, defend, maintain, or enforce IP rights on which our business depends, including against existing or future competitors, our growth and success may be adversely affected.
- Third parties may assert that we are infringing upon their IP rights, which could divert management’s attention, cause us to incur significant costs, and prevent us from selling or using the technology to which such rights relate.

Risks Related to Our Business and Our Industry

Our limited operating history and our rapidly evolving industry make it difficult to evaluate our business, the risks and challenges we may face and future prospects.

Prior to the first half of 2022, we focused principally on developing and proving our fundamental gravity energy storage technology, marketed as our G-Vault products, which we are seeking to further refine and commercialize. Beginning in 2022, we expanded our offerings to include BESSs and HESSs. In 2024, we launched our B-Nest product. To date, we have only completed three BESSs and one GESS, which was the EV1 Tower in Lugano, Switzerland (the “EV1 CDU”), which served as a commercial demonstration unit until its decommissioning in September 2022. As a result, we have a limited history operating our business and constructing energy storage systems, and therefore a limited history upon which you can base an investment decision.

Our future growth in a nascent and rapidly-evolving industry is dependent on a number of factors, including rising demand for clean electric power solutions that can provide electric power with lower carbon emissions and replacement of conventional generation sources and the adoption speed of digital software applications to modernize the efficiency of power assets and the electric grid. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power, decreases in the cost of manufacturing battery modules and cells, customer needs for services and digital applications, commercial, legal, regulatory, and political pressure for the reduced use of and reliance on fossil fuels and electric power generation that relies on fossil or other non-renewable fuels, and a rapidly growing energy storage market driven by increasing demand from utilities, independent power producers, and large energy users. However, predicting future revenues and appropriately forecasting and budgeting for our expenses is difficult, and we have limited operating history to predict trends that may emerge and take hold and materially affect our business. Our future operations and strategy is therefore subject to all of the risks inherent in light of the expenses, difficulties, complications and delays frequently encountered in connection with the growth of any new business in a nascent industry, as well as those that are specific to our business in particular.

Our projections are subject to significant risks, assumptions, estimates and uncertainties. As a result, our projected revenues, market share, expenses and profitability may differ materially from our expectations.

Our projections are subject to significant risks, assumptions, estimates and uncertainties. Such projections reflect our current views with respect to future events or our future financial performance, are based on assumptions, and involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by our projections. We may not actually achieve the plans, expectations or objectives contained in our projections, and the underlying assumptions may prove incorrect. Such deviations may be due to factors outside our control or currently unknown to us. For example, our actual revenues, market share, timing for achieving business milestones, expenses and profitability may differ materially from our expectations. Therefore, undue reliance should not be placed on any of our projections.

As we develop and own more storage projects ourselves, we make projections about construction costs and timelines, and future revenues and operating costs. The profitability of our projects are highly sensitive to these projections and if our

actual results or performance differ materially from our projections, then the profitability of our owned projects could be materially less than our projections or result in losses to the Company.

Our business model depends on acceptance of our technology by our customers, retaining existing customers, and the success of our business model.

As a recent market entrant in a developing industry, our results of operations and financial condition are dependent upon our success in establishing or entering new markets, developing and commercializing our energy storage systems, and undertaking marketing activities. We face significant risks associated with our business strategy of targeting utilities, independent power producers, and large energy users and deploying our energy storage systems at a scale that leads to broad market acceptance and profitability. The relative success of our energy systems will be dependent upon a number of factors, including their ability to provide our customers with reliable and dependable energy storage for the durations that they require, while still being cost-effective, and our ability to effectively manage any customer concerns.

In addition to the development and acceptance of our core energy storage technologies, we anticipate further developing and marketing our digital platform for the management and optimization of energy storage systems. If this platform is not adopted by users of our energy storage products or on a standalone basis, we may not recoup our investment in its development and our results of operation may be negatively impacted.

We depend on a limited number of customers for the majority of our revenue, and the loss of any one of these customers could substantially reduce our revenue and impact our liquidity.

The loss of any significant customers or partners or reduction in our business activities could cause our revenues to decrease significantly and increase our losses from operations. If our products are not successful and we cannot broaden our customer base, we will continue to depend on a few customers for the majority of our revenues. Additionally, if we are unable to negotiate favorable business terms with these customers in the future, our revenues and gross profits may be insufficient to allow us to achieve and/or sustain profitability, continue operations, or remain a going concern.

The engineering of our systems is in continuous refinement to improve system cost and efficiency. There is no guarantee that we will be successful in implementing all improvements under the expected schedule.

Our business depends on our ability to succeed in implementing our energy storage systems and introduce innovative and competitive energy storage technologies. As our energy storage systems are highly complex, this process is costly and time-consuming.

Any future energy storage deployments may incur more costs than we expect. Our business, reputation, results of operations and financial condition may be materially adversely affected if we do not successfully implement our systems or to the extent that such implementation occurs later or costs more than we expect, or if innovations by our competitors achieve broader or earlier market acceptance. Examples of costs that we cannot control include the costs of electronics due to global allocation shortages or costs associated with construction delays.

If we are not able to reduce our cost structure in the future, our ability to become profitable may be impaired.

Over time, we must effectively manage the equipment and construction costs of our energy storage systems to expand our market. While we have sought, and will continue to seek, to manage our costs, the cost of components and raw materials, for example, could increase in the future. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses, including increases in wages or other labor costs, as well as installation, marketing, sales or related costs. We may continue to make significant investments to drive growth in the future. To the extent that the price of electricity from the grid is low in certain markets, we will need to continue to reduce our costs to maintain our expected margins in those markets. Increases in any of these costs or our failure to achieve projected cost reductions could adversely affect our results of operations and financial condition and harm our business and prospects. If we are unable to reduce our cost structure sufficiently in the future, we may not be able to achieve profitability, which could have a material adverse effect on our business and prospects.

Operational costs can be difficult to predict and may include costs from requirements related to the decommissioning of our systems.

We rely heavily on complex machinery for our operations and our production involves a significant degree of uncertainty and risk in terms of operational performance and costs. When fully operational, our energy storage systems will consist of large-scale machinery comprised of many components assembled on-site for our customers or for our owned projects. The components of our energy storage systems are likely to suffer unexpected malfunctions from time to time and will depend on repairs and spare parts to resume operations, which may not be available when needed. Unexpected malfunctions of our energy storage systems or their constituent components may significantly affect the intended operational efficiency and performance. In addition, our energy storage systems may need to be decommissioned from time to time, and the related

costs could be significant given the size and complexity of our energy storage systems. Operational performance and costs, including those related to project stoppage, can be difficult to predict and are often influenced by factors outside of our control, such as, but not limited to, scarcity of natural resources, environmental hazards and remediation, costs associated with construction, commissioning, testing or decommissioning of machines, labor disputes and strikes, difficulty or delays in obtaining governmental permits, damages or defects in electronic systems, industrial accidents, fire, seismic activity and natural disasters. Should operational risks materialize, it may result in the personal injury to or death of workers, the loss of production equipment, damage to demonstration facilities, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs and potential legal liabilities, all which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.

Furthermore, in recent periods, our internal operations have grown in complexity. We may in the future continue to grow our operations, both in terms of complexity and headcount. Any continued growth could increase our operational costs and failure to manage such growth could lead to additional costs in the future.

Our energy storage systems have significant upfront costs. We will need to obtain financing to fund our own projects and our customers may need to obtain financing to help finance purchases. If we or our customers are unable to procure third-party financing or if the cost of such financing exceeds our estimates, our business would be adversely affected.

Our energy storage systems have significant upfront costs, and certain customers may need, or may prefer to acquire, third-party financing to purchase our systems. We will need to obtain third-party financing to continue our transition to owning assets as well as selling energy storage products.

Therefore, our growth, including the deployment of our energy storage systems, may to an extent depend on our own and our customers' ability to attract third-party financing partners. The ability to obtain third-party financing depends on many factors that are outside of our control, including the ability of third parties to utilize tax credits and other government incentives, interest rate and/or currency exchange fluctuations, the borrower's perceived creditworthiness and the condition of credit markets generally. We expect that the financing of customer purchases of our energy storage systems or our own projects will be subject to customary conditions such as the borrower's credit quality, and if these conditions are not satisfied, such customers may be unable to finance purchases of our energy storage systems and we may not be able to fund our own projects, which would have an adverse effect on our revenue. To the extent neither our customers or us are able to arrange future financings for any of our current or potential projects, our business would be negatively impacted.

In attempting to attract new customers to support our growth, we intend to refine our customer agreements based on experience. Moreover, new types of product offerings may require our customers to find partners willing to finance these new projects, which may have different terms and financing conditions from prior transactions. If the terms of these transactions or the structure of these projects fails to attract financiers, we may not be able to proceed with growing our business and our potential for growth may be limited. Additionally, financing options are also limited by the borrower's willingness to commit to making fixed payments regardless of the performance of the energy storage systems or our performance of our obligations under the customer agreement.

Further, our sales process for transactions that require financing require that we and our customers make certain assumptions regarding the cost of financing capital. If the cost of financing ultimately exceeds our estimates, we may be unable to proceed with some or all of the impacted projects or our revenue from such projects may be less than our estimates. Actual financing costs for potential customers may vary from our estimates due to factors outside of our control, including changes in customer creditworthiness, macroeconomic factors, the returns offered by other investment opportunities available to our financing partners, and other factors.

If we or our customers are unable to procure financing partners willing to finance deployments of our products or if the cost of such financing exceeds our estimates, our business would be negatively impacted.

The economic benefit of our energy storage systems to us and to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change.

The electricity stored and released by our systems may not currently be cost-competitive in some geographic markets, and we may be unable to reduce our costs to a level at which our energy storage systems would be competitive in such markets. To the extent that either we as an owner or our customers anticipate selling power into markets as a merchant generator, our customers and the Company may not be able to achieve the anticipated level of revenues and profits. As such, unless the cost of electricity in these markets rises or we are able to generate demand for our energy storage systems based on benefits other than electricity cost savings, our potential for growth may be limited.

Our energy storage systems' performance may not meet our customers' expectations or needs.

Our energy storage systems will be subject to various operating risks that may cause them to generate less value for our customers than expected. These risks include a failure or wearing out of our equipment or the equipment that our equipment connects into, an inability to find suitable replacement equipment or parts, or disruption in our distribution systems. Any extended interruption or failure of our projects or our customer's projects, including systems we operate under long term service agreements, for any reason to generate the expected amount of output could adversely affect our business, financial condition and results of operations. In addition, our customers' willingness to acquire additional systems or services from us may be impacted in the future if any of our systems incur operational issues that indicate expected future cash flows from the system are less than the carrying value. Any such outcome could adversely affect our operating results or ability to attract new customers.

If our estimates of the useful life for our energy storage systems are inaccurate or we do not meet service and warranties and performance guarantees, our business and financial results could be adversely affected.

We provide limited warranties and performance guarantees for our energy systems. We make investment decisions for our owned projects based in part on an estimate of the useful life of our products. To date, we have deployed three operational BESSs and our estimates about product performance and life may prove to be incorrect. Failure to meet these warranties and performance guarantee levels for our customers may require the purchase price to be adjusted downward based on agreed-upon performance targets, or require us to make cash payments to the customer based on actual performance, as compared to expected performance. Failure to meet these expected performance levels on our owned projects could materially and adversely impact the expected performance of such projects.

We intend to explore alternative, co-active use case opportunities for our systems, but there is no assurance that such opportunities exist or that they would be as beneficial to us as we expect.

We intend to explore alternative, co-active use case opportunities for our energy storage systems. For example, we intend to explore opportunities in energy-intensive industries such as vertical farming, data centers, direct air carbon capture where our systems may be able to benefit from existing infrastructure, including physical enclosures and electrical systems, that are built into the designs for our energy storage systems. Even after we spend time and resources exploring such opportunities, there is no assurance that they exist on terms that are commercially acceptable to us. Moreover, even if we enter into agreements to make use of such opportunities, such opportunities may not be as beneficial to us as we expected at the time of entering into the underlying agreement. Any of the foregoing may adversely affect our business, financial condition, results or operations and prospects.

There is no assurance that non-binding letters of intent and other indications of interest, including awards, submitted proposals or short-lists, will result in binding orders or sales. Customers may cancel or delay the non-binding letters of intent and other indications of interest in our sales pipeline. As a result, our operating results and cash flows may be materially lower than our expected results of operations.

Our success depends on our ability to generate revenue and operate profitably, which depends in part on our ability to identify target customers and convert such contacts into meaningful orders or expand on current customer relationships. To date, we have only deployed three operational energy systems. While our contracts do provide that our customers will be obligated to pay us certain fees in the event of termination for their convenience, such fees may not be sufficient to cover our costs and we would not realize the expected revenue associated with such cancelled contracts. Potential and contracted customers may abandon their indications of interest, or fail to honor contractual obligations and non-binding letters of interest may be cancelled or delayed by a customer for any reason or its terms may be amended in a manner adverse to us in connection with negotiating a definitive sales agreement. For that reason, there can be no assurance that any current or future indications of interest (including awards, submitted proposals or short-lists) or non-binding letters of intent will result in binding orders or sales. Furthermore, in light of our limited operating history, it is difficult for us to predict the rates at which the non-binding letters of intent or other indications of interest in our pipeline will result in binding orders or sales. It is also difficult for us to predict how quickly we will be able to fill binding orders in the event that we obtain multiple orders. In addition, revenue is expected to be recognized in stages, and customers may in some cases delay actual cash payments regardless of progressive billings. Additionally, a customer's ability to make payments could decline during the sales process, even to the point of insolvency or bankruptcy. As a result, our operating results and cash flow may be materially lower than we expect.

Our future growth depends upon our ability to maintain relationships with third parties, and the terms and enforceability of many of these relationships are not certain.

We expect to rely on engineering, procurement, and construction, or EPC, firms as third-party general contractors to install energy storage systems at our own and our customers' sites. We are likely to work with a limited number of such EPC firms, which may impact our ability to facilitate installations as planned. Our work with contractors or their sub-contractors

may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation and other union requirements, which can add costs and complexity to an installation project. In the future, the timeliness, thoroughness and quality of installation-related services performed by our general contractors and their sub-contractors may not meet our expectations and standards and it may be difficult to find and train third-party general contractors that meet our standards at a competitive cost.

In addition, a key component of our growth strategy is to develop or expand our relationships with third parties. For example, we are investing resources in establishing strategic relationships with market players across a variety of industries, including, large renewable project developers, commercial agents, environmental organizations and unions, to generate new customers or to grow our business. These programs may not roll out as quickly as planned or produce the results we anticipated. A significant portion of our business depends on attracting new partners and retaining existing partners, and such relationships may not be predicated on enforceable agreements or any agreements at all.

We depend upon component and product manufacturing and logistical services provided by third parties, many of whom are located outside of the U.S.

A significant amount of our components, including batteries utilized in our BESS offerings, and products are manufactured in whole or in part by a few third-party manufacturers. Many of these manufacturers are located outside of the U.S. If a catastrophic event occurs relative to these third-party manufacturers, or the political, social, or economic conditions shift within their respective geographies or between trade partners, we could experience business interruptions, delayed delivery of products, or other adverse impacts to our ongoing business. We have also outsourced much of our transportation and logistics management. While these arrangements may lower operating costs, they also reduce our direct control over production and distribution. Such diminished control could have an adverse effect on the quality or quantity of our products as well as our flexibility to respond to changing conditions. In addition, we rely on third-party manufacturers to adhere to the terms and conditions of the agreements in place with each party. For example, although arrangements with such manufacturers may contain provisions for warranty expense reimbursement, we may remain responsible to the customer for warranty service in the event of product defects. Any unanticipated product or warranty liability, whether pursuant to arrangements with contract manufacturers or otherwise, could adversely affect our reputation, financial condition, and operating results.

The failure or inability of our suppliers to deliver necessary components or raw materials for construction of our energy storage systems and their failure or inability to deliver them in a timely manner could cause installation delays, cancellations, penalty payments and damage to our reputation.

We rely on a limited number of third-party suppliers for some of the components and raw materials such as steel, cement, polymers and, in certain cases, coal ash waste and retired wind turbine blades, and other materials that may be of limited supply for our G-Vault products and batteries, inverters, enclosures, and transformers for our BESSs. If any of our suppliers fail or are unable to provide sufficient components or raw materials at the level of quality required, or if our suppliers fail or are unable to or unwilling to provide us with the contracted quantities (as we have limited or in some case no alternatives for supply), or if our suppliers cancel the contracted quantities without sufficient lead time to order the materials from another supplier, or if our suppliers fail or are unable to deliver the components or raw materials in a timely manner, then delays, cancellations, penalty payments, or damage to our reputation could occur, which could have a material adverse effect on our business and our results of operations. If we fail to develop or maintain our relationships with any of our suppliers, or if there is otherwise a shortage, lack of availability, or cancellation of the purchase of any required raw materials or components, we may be unable to manufacture our energy storage systems or such products may be available only at a higher cost or after a long delay.

Additionally, there are increasing expectations in various jurisdictions that companies monitor the environmental and social performance of their suppliers, including sourcing of materials and compliance with a variety of labor practices, as well as consider a wider range of potential environmental and social matters, including the end-of-life considerations for products. In addition, increasing concern and focus on limiting forced labor may result in additional regulations targeting the markets we operate in and from which we source products and materials. Certain existing laws impose prohibitions on the importation of goods made with forced labor or compulsory prison labor, including the Tariff Act of 1930, the Uyghur Forced Labor Prevention Act (“UFLPA”), and other global laws against forced labor. The UFLPA places restrictions on imports from Xinjiang, a key source of materials in global supply chains. Compliance can be costly, require us to establish or augment programs to diligence or monitor our suppliers, or to design supply chains to avoid certain regions altogether. Failure to comply with such regulations can result in fines, reputational damage, import ineligibility for our products or product components, or otherwise adversely impact our business. Current or future supply chain interruptions that could be exacerbated by global political tensions, such as the situation in Ukraine, conflict in the Middle East, and public health emergencies, could also negatively impact our ability to acquire necessary raw materials and components. Such delays could prevent us from delivering our energy storage systems to customers within required time frames and cause order

cancellations. Developing required raw materials and constructing required components for our products are time and capital intensive. Accordingly, the number of suppliers we have for some of our components and materials is limited and, in some cases, sole sourced. We may be unable to obtain comparable components from alternative suppliers without considerable delay, expense, or at all. If our suppliers face difficulties obtaining the credit or capital necessary to expand their operations when needed, they could be unable to supply necessary raw materials and components needed to support our planned sales and services operations, which would negatively impact our sales volumes and cash flows.

Our systems often rely on interconnections to distribution and transmission facilities that are owned and operated by third parties, and as a result, are exposed to interconnection and transmission facility development and curtailment risks.

A primary potential use case for our energy storage systems involves interconnection with electric distribution and transmission facilities owned and operated by regulated utilities, and independent system operators, necessary to deliver the electricity that our energy storage systems produce. A failure or delay in the operation or development of these distribution or transmission facilities could result in a loss of revenues or breach of a contract because such a failure or delay could limit the amount of electricity that our energy storage systems deliver or delay the completion of our construction projects. In addition, certain of our energy storage systems' generation may be curtailed without compensation due to distribution and transmission limitations, reducing our revenues and impairing our ability to capitalize fully on a particular project's potential. Such a failure or curtailment at levels above our expectations could adversely affect our business.

Our business is subject to risks associated with construction, cost overruns and delays, including those related to obtaining government permits and approvals, electrical interconnection, and other contingencies that may arise in the course of completing installations.

Our business is subject to risks relating to construction, cost overruns and delays. The installation and operation of our energy storage systems at a particular site is generally subject to oversight and regulation in accordance with national, state, tribal, and local laws and ordinances relating to building codes, health and safety, environmental protection, Federal Energy Regulatory Commission ("FERC") and specific Independent System Operators regulation and related matters, and typically requires obtaining and keeping in good standing various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. It is difficult and costly to track the requirements of every individual authority having jurisdiction over energy storage system installations, to design our energy storage systems to comply with these varying standards, which may change over time, and for us and our customers to obtain all applicable approvals and permits. We cannot predict whether or when all permits and approvals required for a given project will be granted or whether the conditions associated with the permits and approvals will be achievable. The denial of a permit or approval or utility connection that is essential to a project or the imposition of impractical conditions would impair our or our customer's ability to develop the project. In addition, we cannot predict whether the permitting and approvals process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay our or our customers' abilities to develop that project or increase the cost so substantially that the project is no longer attractive. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our energy storage systems and could therefore adversely affect the timing of the recognition of revenue related to hardware acceptance by our customer, or our own ability to generate revenue from our owned projects which could adversely affect our operating results in a particular period. Delays relating to constructions may also bring about cost overruns, which could further adversely affect our business.

In addition, the successful installation of our energy storage systems is dependent upon the availability of and timely connection to the local electric grid. Before beginning construction on an energy storage system, we may be unable to obtain in a timely fashion or at all the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy to customers. Any delays in our customers' ability to connect with utilities, delays in the performance of installation-related services or poor performance of installation-related services will have an adverse effect on our results and could cause operating results to vary materially from period to period. FERC issued Order No. 2023 on July 28, 2023 in an attempt to address interconnection queue backlogs and related issues with the interconnection process, including with respect to energy storage facilities. Transmission owners and operators are in the process of developing proposed rules to implement Order No. 2023, the results of which remain uncertain at this time.

The size of our G-Vault products may negatively impact our ability to enter into contracts with customers or obtain government permits and approvals.

Our G-Vault products require a considerably larger space for their deployment than comparable systems based on certain technologies such as lithium-ion technology, and this can result in a significant delay in the permitting process. In addition, the size of our G-Vault products may represent an impediment for deployment in denser areas or areas with restrictions on

the height of buildings. And, in light of the size of our systems, we generally require hard soil or the ability to get to bedrock in order to deploy our systems. These factors may negatively impact our ability to enter into customer contracts or obtain government permits and approvals, each of which may materially affect our business.

Our G-Vault, H-Vault, and B-Nest products are based on established principles that are deployed in a novel way to create new technologies to store energy and potential customers may be hesitant to make a significant investment in our technology or abandon the technology they are currently using.

The design of our G-Vault, H-Vault, and B-Nest products are based on established principles that are deployed in a novel way; the products are intended to provide longer energy storage durations than are provided by other types of energy storage systems.

Potential customers who previously invested in alternatives to our innovative products may not deem a transition to our existing or future advanced energy storage solutions to be cost-effective. In particular, recently the costs of lithium-ion batteries has declined precipitously making our advanced products less cost efficient in comparison. Moreover, given the limited history of our advanced products, potential customers may be hesitant to make a significant investment in our products. Our business, results of operations, financial condition and prospects could be adversely affected to the extent that customers, for any reason, do not adopt our systems or migrate to our systems from another energy storage technology.

We face additional risks to the extent that customers choose to purchase energy storage and dispatch of electricity from systems we build and in which we retain an ownership interest rather than purchase an energy storage system.

In certain circumstances we enter into tolling arrangements in which customers purchase the energy storage and dispatch of electricity from us while we retain an ownership interest in the system. To date, we have entered into two such tolling arrangements, but we are actively looking at additional opportunities.

We could face additional risks when we own and operate energy storage systems, as compared to when the customer owns and operates energy storage systems that we build. For example, we may need to seek equity and/or debt financing to fund the construction and operation of any energy storage systems built in connection with a project for a customer who chooses to enter into a tolling arrangement. Such financing may not be available on terms acceptable to us, if at all. Moreover, we expect that any such indebtedness would be secured by a lien on the related energy storage system, and the governing debt agreement may contain covenants imposing operating and financial restrictions on our operations. In addition, until any such debt is repaid, we may not be able to generate meaningful cash flow from the project. Moreover, the failure of our customers to make payments could trigger an event of default under such governing debt agreements, which could result in the acceleration of repayment of our outstanding indebtedness or even entitle our lender to foreclose on the collateral securing our debt. In addition, to the extent equity financing is also used, our right to receive cash flows from the project could be subordinated to the other equity investors.

Additionally, there could be a material adverse effect on our operating results and our cash flows to the extent we own and operate our energy storage systems for the benefit of customers under tolling arrangements. For example, we would not expect to receive any payments from the customer until the system is completed and expenses relating to insurance premiums, personnel, and our interest payments under debt agreements would be increased, and such increases may be material. We could also be required to provide ongoing maintenance and repair services or could face liability for any damages or injuries if the system malfunctions. Additionally, we would be subject to the risks of termination of the agreement by the customer and the inability to replace the customer would result in the system failing to generate revenue. We may also incur liabilities as a result of a performance failure or other breach of our obligations in connection with the operation of the system.

We may also be subject to additional legal and regulatory restrictions to the extent we own and operate an energy storage system, including relating to the transmission of energy. Such legal and regulatory restrictions could increase the costs of compliance and potentially subject us to threatened or actual litigation or administrative proceedings, each of which could have a material adverse effect on our business, operating results and financial condition.

Increasing attention to, and scrutiny of, ESG matters could increase our costs, harm our reputation, impact our share price or access to or cost of capital, or otherwise adversely impact our business.

Companies across industries are facing increasing scrutiny from a variety of stakeholders related to their ESG and sustainability practices. Expectations regarding voluntary ESG initiatives and disclosures and consumer demand for alternative forms of energy may result in increased costs (including but not limited to increased costs related to compliance, stakeholder engagement, contracting and insurance), changes in demand for certain products, enhanced compliance or disclosure obligations, or other adverse impacts to our business, financial condition, or results of operations.

While we may at times engage in voluntary initiatives (such as voluntary disclosures, certifications, or goals, among others) to improve the ESG profile of our company or to respond to stakeholder expectations, such initiatives may be costly and

may not have the desired effect. Expectations around company's management of ESG matters continues to evolve rapidly, in many instances due to factors that are out of our control. For example, we may ultimately be unable to complete certain initiatives or targets, or execute on any opportunities we have identified, either on the timelines initially announced or at all, due to technological, cost, or other constraints, which may be within or outside of our control. Moreover, actions or statements that we may take based on based on expectations, assumptions, or third-party information that we currently believe to be reasonable may subsequently be determined to be erroneous or be subject to misinterpretation. If we fail to, or are perceived to fail to, comply with or advance certain ESG initiatives (including the timeline and manner in which we complete such initiatives), or to not keep pace with peers on ESG initiatives and/or disclosures, we may be subject to various adverse impacts, including reputational damage and potential stakeholder engagement and/or litigation, even if such initiatives are currently voluntary. For example, there have been increasing allegations of greenwashing against companies making significant ESG claims due to a variety of perceived deficiencies in performance or methodology, including as stakeholder perceptions of sustainability continue to evolve.

Certain market participants, including major institutional investors and capital providers, use third-party benchmarks and scores to assess companies' ESG profiles in making investment or voting decisions. Unfavorable ESG ratings could lead to increased negative investor sentiment towards us, which could negatively impact our share price as well as our access to and cost of capital. To the extent ESG matters negatively impact our reputation, it may also impede our ability to compete as effectively to attract and retain employees, customers, and/or business partners, which may adversely impact our operations. While many stakeholders expect companies to pursue ESG initiatives, others may seek to reduce companies' efforts on certain ESG-related matters. Both advocates and opponents to certain ESG matters are increasingly resorting to a range of activism forms, including media campaigns and litigation, to advance their perspectives. In addition, there are also increasing levels of regulation, disclosure-related and otherwise, with respect to ESG matters. We may ultimately be subject to regulations that are not uniform in nature or reflective of shared regulatory goals. Our efforts to respond to varying requirements may not be successful and/or may subject us to additional stakeholder engagement. This and other stakeholder expectations will also likely lead to increased costs as well as scrutiny that could heighten all of the risks identified in this risk factor. Additionally, many of our customers and suppliers may be subject to similar expectations, which may augment or create additional risks, including risks that may not be known to us.

Should we pursue acquisitions in the future, it would be subject to risks associated with acquisitions.

We may acquire additional assets, products, technologies, or businesses that are complementary to our existing business. In particular, we are actively seeking new opportunities for our Build-Own-Operate model. The process of identifying and consummating acquisitions and the subsequent integration of new assets and businesses into our own business would require attention from management and could result in a diversion of resources from our existing business, which in turn could have an adverse effect on our operations. Acquired assets or businesses may not generate the expected financial results. Acquisitions could also result in the use of cash, potentially dilutive issuances of equity securities, the occurrence of goodwill impairment charges, amortization expenses for other intangible assets and exposure to potential unknown liabilities of the acquired business.

If we complete future acquisitions, we may not ultimately strengthen our competitive position or achieve our goals and business strategy. We may be subject to claims or liabilities assumed from an acquired company, product, or technology; acquisitions we complete could be viewed negatively by our customers, investors, and securities analysts; and we may incur costs and expenses necessary to address an acquired company's failure to comply with laws and governmental rules and regulations. Additionally, we may be subject to litigation or other claims in connection with the acquired company, including claims from terminated employees, former stockholders or other third parties, which may differ from or be more significant than the risks our business faces. If we are unsuccessful at integrating future acquisitions in a timely manner, or the technologies and operations associated with such acquisitions, our revenue and operating results could be adversely affected. Any integration process may require significant time and resources, which may disrupt our ongoing business and divert management's attention, and we may not be able to manage the integration process successfully or in a timely manner. We may not successfully evaluate or utilize the acquired technology or personnel, realize anticipated synergies from the acquisition, or accurately forecast the financial impact of an acquisition transaction and integration of such acquisition, including accounting charges and any potential impairment of goodwill and intangible assets recognized in connection with such acquisitions. We may have to pay cash, incur debt, or issue equity or equity-linked securities to pay for any future acquisitions, each of which could adversely affect our financial condition or the market price of our common stock. Furthermore, the sale of equity or issuance of equity-linked debt to finance any future acquisitions could result in dilution to our stockholders. The occurrence of any of these risks could harm our business, operating results, and financial condition.

Our operations are international, and expanding operations in some international markets could expose us to additional risks.

Our operations are international, and we continue to expand our business internationally as we seek to partner with customers, suppliers and other partners around the world. We currently have operations in Switzerland, Australia, United Kingdom, sales agents in other territories, and our signed purchase order and letters of intent are with counterparties around the world. Managing further international expansion will require additional resources and controls including additional support, manufacturing, and assembly facilities. Any expansion internationally could subject our business to risks associated with international operations, including:

- conformity with applicable business customs, including translation into foreign languages and associated expenses;
- lack of availability of government incentives and subsidies;
- challenges in arranging, and availability of, financing for our customers;
- potential changes to our established business model;
- cost of alternative power sources, which could be meaningfully lower outside the United States;
- availability and cost of raw materials, labor, equipment for manufacturing or assembling our energy storage systems;
- difficulties in staffing and managing foreign operations in an environment of diverse culture, laws, and customers, and the increased travel, infrastructure, finance, and legal and compliance costs associated with international operations;
- installation challenges which we have not encountered before which may require the development of a unique model for each country;
- compliance with multiple, potentially conflicting and changing governmental laws, regulations, and permitting processes including construction, environmental, banking, employment, tax, safety, security, grid minimum performances, and data privacy and protection laws and regulations;
- compliance with U.S. and foreign anti-bribery laws including the Foreign Corrupt Practices Act and the U.K. Anti-Bribery Act;
- greater difficulties in securing or enforcing our IP rights in certain jurisdictions, or greater chance of potential infringement of third-party IP rights in new jurisdictions;
- difficulties in funding our international operations;
- difficulties in collecting payments in foreign currencies and associated foreign currency exposure;
- restrictions on repatriation of earnings;
- compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and compliance with applicable U.S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws, and potentially adverse tax consequences due to changes in such tax laws;
- increases or decreases in our expenses caused by fluctuation in foreign currency exchange rates;
- changes in tariffs and import/export regulations imposed by local governments;
- changes in regulations regarding the use of waste materials in our products;
- changes in regulations that would prevent us from doing business in specified countries;
- failure of the supply chain in local countries to provide us with materials of a sufficient quality and quantity delivered on timelines we expect;
- the impacts of government spending on infrastructure projects and more broadly, including any impacts of government debt defaults or budget crises (including in the United States);
- the outbreak of war or other hostilities; and
- regional economic and political conditions.

As a result of these risks, any potential future international expansion efforts that we may undertake may not be successful.

In addition, nearly all of our letters of intent are denominated in U.S. dollars, and certain of our definitive agreements could be denominated in currencies other than the U.S. dollar. A strengthening of the U.S. dollar could increase the cost of our solutions to our international customers, which could adversely affect our business and results of operations. In addition, if an increased portion of our operating expenses is incurred outside the United States and is denominated in foreign currencies, we would be subject to increased financial impacts resulting from fluctuations in foreign currency exchange rates. If we become more exposed to currency fluctuations and are not able to successfully hedge against the risks associated with currency fluctuations, our results of operations could be adversely affected.

Our future growth is dependent upon the pace and depth of energy storage technologies, which are emerging industries, as well as our competition. If the markets for energy storage do not develop as we expect, or if they develop more slowly than we expect, our business, prospects, financial condition and operating results could be adversely affected.

Our future growth depends upon factors in our industry, including with respect to our competition, the speed at which the market adopts energy storage for grid reliability, our ability to penetrate such market and the state of energy storage technologies. Because energy storage is an emerging industry, it is evolving and characterized by rapidly changing technologies, changing government regulation and industry standards, and changing consumer demands and behaviors. If this market does not develop as we expect, including if it develops more slowly than we expect, demand for our energy storage systems or any digital platform that we may develop, our business, prospects, financial condition and operating results could be adversely affected.

Additionally, the energy storage market is largely driven by installed capacity of renewable electricity generation and increasing demand for renewable sources of power. Since many of these renewable sources of power are intermittent, like wind and solar, the energy produced by them must be stored for use when there is demand. Should government requirements for these intermittent power sources be relaxed or social desires for lower-carbon sources of energy decline, there could be a detrimental impact on one of our primary markets.

Even if renewable energy and energy storage become more widely adopted, our energy storage technology may not achieve widespread market acceptance or may be less cost-effective as compared to competing technologies.

Our business depends on the acceptance of our products in the marketplace. Even if renewable energy and energy storage become more widely adopted than they have been to date, potential customers may choose energy storage products from our competitors that are based on their technologies. If they do so, it may be difficult to later transition such potential customers to products offered by us. Moreover, the marketplace for renewable energy storage products is rapidly evolving, and competing technologies of which we are currently unaware may emerge in the future. If the energy storage technology that supports our products does not achieve market acceptance, then our business and results of operations would be materially adversely affected.

The growth and profitability of our business is dependent upon our technology being more cost-effective than competing energy storage technologies. To the extent our offerings are not eligible for various regulatory incentives, while those of our competitors are, it may adversely impact our competitiveness or otherwise adversely impact our business.

We operate in highly competitive energy industries and there is increasing competition. Many of our competitors and future competitors may have significantly more financial and other resources than we do and if we do not compete effectively, our competitive positioning and our operating results will be harmed.

The energy markets in which we compete continue to evolve and are highly competitive. Many of our current and potential competitors are large entities at a more advanced stage in development and commercialization than we are and in some cases have significantly more financial and other resources, including larger numbers of managerial and technical personnel, to increase their market share. For example, several companies, such as ESS Inc., Eos Energy Enterprises Inc., Hydrostor Inc. and Primus Power, have each announced plans and demonstrated prototypes of products that would compete in the energy storage market, and battery vendors with whom we compete, such as Tesla, Inc., Fluence Energy, Inc., LG Chem, Ltd., Samsung Electronics Co., Ltd and Contemporary Amperex Technology Co. Limited, have already commercialized their respective energy storage solution products. Companies such as Tesla, Inc., Fluence Energy, Inc. and Wartsila Corporation have developed or are developing their own energy management software. If our competitors continue to penetrate the renewable energy, energy storage and energy management software markets, we may experience a reduction in potential and actual market share. Furthermore, certain industry participants against whom we do not currently compete (including, in some cases, our suppliers) may shift their strategic focus and begin competing directly with us. To date, we have focused our efforts on recruiting management and other employees, business planning, raising capital, selecting applicable third-party technologies, establishing and attempting to establish partnerships with potential suppliers, customers and ecosystem partners, developing our gravity, battery, and green hydrogen energy storage systems, a digital platform, and general corporate development.

We expect competition in energy storage technology to intensify due to a regulatory push for lower-carbon energy sources, including intermittent sources such as wind and solar, continuing globalization, and consolidation in the energy industry. Developments in alternative technologies or improvements in energy storage technology made by competitors may materially adversely affect the sales, pricing and gross margins of our future energy storage systems and any digital platform. If a competing process or technology is developed that has superior operational or price performance, our business would be harmed.

Furthermore, our energy storage technology also competes with other emerging or evolving technologies, such as thermal storage, chemical storage, and carbon capture storage and sequestration. If we are unable to keep up with competitive developments, including if such technologies achieve lower prices or enjoy greater policy support than our technology, our competitive position and growth prospects may be harmed, which would adversely affect our business, prospects and financial condition.

Some of our current and potential competitors have longer operating histories and greater financial, technical, marketing and other resources than we do. These factors may allow our competitors to respond more quickly or efficiently than we can to new or emerging technologies. These competitors may engage in more extensive research and development efforts, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to more effectively compete for new energy storage projects and energy management software customers.

We intend to continue committing significant resources to establish a competitive position. There is no assurance we will successfully identify the right partners, or that products and technologies developed by others will not render our energy storage systems and any digital platform that we may develop obsolete or noncompetitive, any of which would adversely affect our business, prospects and operating results.

If we are unable to attract and retain key employees and hire qualified management, technical, engineering, and sales personnel, including a highly skilled and diverse management team with experience in the energy storage sectors, our ability to compete and successfully grow our business could be harmed.

We believe that our success and our ability to reach our strategic objectives are highly dependent on the contributions of our key management, technical, engineering and sales personnel. The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our products and services, including with respect to our prototype products, and negatively impact our business, prospects and operating results. In particular, we are highly dependent on the services of Robert Piconi, our Chief Executive Officer. None of our key employees is bound by an employment agreement for any specific term. We cannot assure you that we will be able to successfully attract and retain senior leadership necessary to grow our business. Furthermore, there is increasing competition for talented individuals in our field, and competition for qualified personnel is especially intense in the renewable energy and energy storage industry in the U.S., Australia, and Switzerland, where our offices are located. Our failure to attract and retain our executive officers and other key technology, sales, marketing and support personnel, could adversely impact our business, prospects, financial condition, and operating results.

We believe that it is vital to our operating success that we recruit and retain key personnel, including a highly skilled and diverse management team with experience in the renewable energy and energy storage sectors. If we fail to maintain a highly skilled and diverse management team, we may not be able to achieve our strategic objectives, which would negatively impact our business and operating success. In addition, because our industry is still in a nascent stage, there is and will continue to be a scarcity of skilled personnel with experience in our industry. If we lose a member of our management team or key employee, it may prove difficult for us to replace such employee with a similarly qualified individual with experience in the renewable energy and energy storage industry, which could impact our business and operating success.

Labor disputes could disrupt our ability to serve our customers and/or lead to higher labor costs.

As of December 31, 2024, we employed 158 full-time employees and 5 part-time employees, none of whom are represented by unions or collective bargaining agreements. If a union sought to organize any of our other employees, such organizing efforts or collective bargaining negotiations could potentially lead to work stoppages and/or slowdowns or strikes by certain of our employees. Additionally, the EPC firms that we rely upon to install our energy storage systems may have employees represented by unions or collective bargaining agreements. Any work stoppages and/or slowdowns by certain of our employees or certain employees at the EPC firms we contract with, could adversely affect our ability to serve our customers.

Further, settlement of actual or threatened labor disputes or an increase in the number of our employees covered by collective bargaining agreements could lead to higher labor costs and could impair productivity and flexibility.

Changes in business, economic, or political conditions, including overall changes in demand, are beyond our control and could impact our business, resulting in lower revenues and other adverse effects to our results of operations.

Economic uncertainty and associated macroeconomic conditions, including heightened inflation, capital markets volatility, interest rate and currency rate fluctuations, and economic slowdown or recession, have resulted and may continue to result in unfavorable conditions that negatively affect demand for our products and exacerbate some of the other risks that affect our business, financial condition, and results of operations. Both domestic and international markets experienced inflationary pressures in 2022 and parts of 2023 and, while inflation has moderated recently, inflation rates in the U.S., as well as in other countries in which we operate, may increase again in the near-term. In addition, the Federal Reserve in the U.S. and other central banks in various countries have raised, and may again raise, interest rates in response to concerns about inflation, which, coupled with reduced government spending and volatility in financial markets, has had and may continue to have the effect of further increasing economic uncertainty and heightening these risks. Interest rate increases or other government actions taken to reduce inflation have resulted in recessionary pressures in many parts of the world. Furthermore, currency exchange rates have been especially volatile in the recent past, and these currency fluctuations have affected, and may continue to affect, the reported value of our assets and liabilities, as well as our cash flows.

A significant downturn in the domestic or global economy may cause our customers to pause, delay, or cancel spending on our offerings or seek to lower their costs by exploring alternatives. Reductions in energy demand due to economic downturns or increased interest rates can make projects in which we invest to be less profitable than our expectations, if at all. To the extent purchases of our offerings are perceived by customers and potential customers as discretionary, our revenue may be disproportionately affected by delays or reductions in energy storage spending. Also, competitors may respond to challenging market conditions by lowering prices and attempting to lure away our customers.

Similarly, our business depends on the overall business and global or regional political conditions, which are beyond our control.

We cannot predict the timing, strength, or duration of any economic slowdown or any subsequent recovery generally, or any industry in particular or how global business and political conditions may change. To the extent that general business, economic or political conditions, including overall changes in demand for our products, decline, our business, financial condition and results of operations, including revenues, could be materially adversely affected.

The productivity of our facilities or our customers' facilities, the operation of our supply chain, the demand, performance and availability of our products, our services, our systems and our business in general may be affected by factors outside of our control, which could result in harm to our business and financial results.

The productivity of our facilities or our customers' facilities, the operation of our supply chain, the demand, performance and availability of our products, our services, our systems and our business in general could be adversely affected by events outside of our control, such as natural catastrophic events, geographical instability, wars, and other calamities. We cannot assure you that, collectively, our process and procedures to recover from a disaster or catastrophe will be adequate to protect us from the effects of fire, floods, typhoons, earthquakes, power loss, telecommunications failures, cyberattacks and other information security incidents, break-ins, war, riots, terrorist attacks, pandemics, or similar events outside of our control, certain of which may become more frequent or intense as a result of climate change. The severity of such factors and frequency at which they occur are also outside our control. If such factors occur our business, financial condition and results of operations, including revenues, could be materially adversely affected.

We are subject to a series of risks related to climate change.

There are inherent climate-related risks wherever business is conducted. Certain of our facilities, as well as third-party infrastructure on which we rely, are located in areas that have experienced, and are projected to continue to experience, various meteorological phenomena (such as drought, heatwaves, wildfire, storms, flooding, freezes, and winter storms, among others) or other catastrophic events that may disrupt our or our suppliers' operations (as well as grid connections), require us to incur additional operating or capital expenditures, result in facility shutdowns, decrease productivity, result in operational risks and increased risks to employee safety, or otherwise adversely impact our business, financial condition, or results of operations. Climate change may increase the frequency and/or intensity of such events. For example, in certain areas, there has been an increase in power shutoffs associated with wildfire prevention. Climate change may also result in various chronic changes to the physical environment, such as changes to water levels, air quality, and/or ambient temperature and precipitation patterns. Physical risks may also compound and contribute to further or more intense impacts. While we may take various actions to mitigate our business risks associated with climate change, this may require us to incur substantial costs and may not be successful, due to, among other things, the uncertainty associated with the longer-term projections associated with managing climate risk. For example, to the extent such events become more frequent or intense, we may not be able to procure insurance to cover all potential losses on terms we deem acceptable.

We are subject to certain risks associated with the energy transition. We anticipate there will be costs associated with transitioning to lower emissions technologies, as well as risks associated with newer technologies, including risks that particular technologies we invest in may not ultimately prove successful or financially viable, as well as other risks that may not presently be known to us. Similarly, the price and availability of various inputs for the products we offer, including electricity and various metals, vary in response to market trends, which may result in higher costs and/or operational disruptions, or other adverse impacts. These impacts may also be exacerbated by various responses from policymakers, including in manners that may for national security or other factors that do not promote the availability or affordability of such materials.

Additionally, we expect to be subject to increased regulations, reporting requirements, standards, or expectations regarding the environmental impacts of our business. For example, policymakers in various jurisdictions, including the United States, United Kingdom, Australia, European Union, and the State of California, among others, have adopted or are considering adopting GHG pricing mechanisms, GHG emission limits, and/or requirements for the disclosure of certain climate-related information, which may require us to incur significant additional costs to comply and impose increased oversight obligations on our management and board of directors ("Board"). Such regulations may also impact our supply chain and the cost of various materials used in our offerings; while we are working to find alternatives to certain materials, we cannot guarantee that we will be able to find suitable alternatives at a cost, quality, or timeframe that is acceptable to us. Government efforts to promote climate resiliency may also result in increased regulatory obligations across a range of laws, not all of which may be primarily climate-related. The expectations of various stakeholders, including customers and employees, regarding such matters likewise continues to evolve. Changing market dynamics, global and domestic policy developments, and the increasing frequency and impact of meteorological phenomena have the potential to disrupt our business, the business of our suppliers and/or customers, or otherwise adversely impact our business, financial condition, or results of operations.

Fuel prices, including volatility in the cost of diesel or natural gas or a prolonged period of low gasoline and natural gas costs, could decrease incentives to transition to renewable energy.

A portion of the current and expected demand for renewable energy results from concerns about volatility in the cost of gasoline and other petroleum-based fuel, the dependency of the United States on oil from unstable or non-aligned countries, government regulations and economic incentives promoting fuel efficiency and alternative forms of energy, as well as concerns about climate change resulting in part from the burning of fossil fuels. We believe that our energy storage systems promote grid reliability, even when fossil fuels are used to generate electricity, but energy storage projects are particularly suited for intermittent alternative energy sources like wind and solar. If the cost of gasoline and other petroleum-based fuel decreases significantly, the outlook for the long-term supply of oil to the United States improves, the government eliminates or modifies its regulations or economic incentives related to fuel efficiency and alternative forms of energy or there is a change in the perception in the cost-benefit analysis regarding the effects of burning fossil fuels on the environment, the demand for renewable energy, including energy storage products such as ours, could be reduced, and our business and revenue may be harmed.

Our insurance coverage, customer indemnifications or other liability protections may be unavailable or inadequate to cover all of our significant risks, which could adversely affect our profitability and overall financial position.

We endeavor to obtain insurance to cover significant risks and liabilities (including, for example, natural disasters, cybersecurity, defective hardware and software and products liability). Not every risk or liability can be insured, and insurance coverage is not always reasonably available. The policy limits and terms of coverage reasonably obtainable may not be sufficient to cover actual losses or liabilities. Even if insurance coverage is available, we are not always able to obtain it at a price or on terms acceptable to us or without increasing exclusions. Disputes with insurance carriers over the availability of coverage, and the insolvency of one or more of our insurers may affect the availability or timing of recovery, as well as our ability to obtain insurance coverage at reasonable rates in the future. In some circumstances we may be entitled to certain legal protections or indemnifications from our suppliers through contractual provisions, laws or otherwise. However, these protections are not always available, are difficult to negotiate and obtain, are typically subject to certain terms or limitations, including the availability of funds, and may not be sufficient to cover our losses or liabilities. If insurance coverage, customer indemnifications and/or other legal protections are not available or are not sufficient to cover risks or losses, it could have a material adverse effect on our financial position, results of operations and/or cash flows.

Risks Related to Our Financial Condition and Liquidity

Material weaknesses in our internal control over financial reporting could have a significant adverse effect on our business and the price of our common stock.

As a public reporting company, we are subject to the rules and regulations established from time to time by the SEC and NYSE. These rules and regulations require, among other things, that we have, and periodically evaluate, procedures with

respect to our internal control over financial reporting. Reporting obligations as a public company are likely to continue to place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel.

In addition, as a public company we are required to document and test our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act so that our management can certify as to the effectiveness of our internal control over financial reporting.

In connection with the preparation of our financial statements and the audit of our financial results for 2022, we had identified a material weakness in our internal controls relating to the recognition of revenue from certain licensing contracts. Although the material weakness has been remediated as of December 31, 2023, there can be no assurance that we will not identify additional material weaknesses in the future.

In future periods, if our senior management is unable to conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or if additional material weaknesses in our internal control over financial reporting are identified, we may be required to restate our financial statements and could be subject to regulatory scrutiny, a loss of public and investor confidence, and to litigation from investors and stockholders, which could have a material adverse effect on our business and the price of our common stock.

In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could cause a decline in our common stock price and adversely affect our results of operations and financial condition. Furthermore, our business has grown rapidly over the last several years and may continue to grow in the future. In the event of further growth, our internal controls over financial reporting may not be adequate to support our operations. Failure to comply with the Sarbanes-Oxley Act could potentially subject us to sanctions or investigations by the SEC, the NYSE or other regulatory authorities, which would require additional financial and management resources.

We are an early stage company with a history of losses, and expect to incur significant expenses and continuing losses for the foreseeable future, and we may not be able to achieve profitability in the future.

Since our inception in October 2017, we have incurred significant net losses and have used significant cash in our business. As of December 31, 2024 and 2023, we had accumulated deficits of \$383.8 million and \$248.1 million, respectively, and net losses of \$135.8 million and \$98.4 million, respectively, for the years ended December 31, 2024 and 2023. We expect to continue to expand our operations, including by investing in manufacturing, sales and marketing, research and development and infrastructure to support our growth. We anticipate that we will incur net losses for the foreseeable future and there is no guarantee that we will achieve or maintain profitability. Our ability to achieve and maintain profitability in the future will depend on a number of factors, including:

- successfully implementing our products on a commercial scale;
- achieving meaningful sales volume;
- the successful and timely development of our suite of software solutions;
- attracting customers;
- expanding into geographical markets;
- our ability or the ability of future customers to obtain financing in a timely basis and with attractive terms to enable them and us to develop energy storage technologies;
- the cost of producing our energy storage systems;
- successful continued development and deployment of our energy storage systems, including our B-Vault, B-Nest, G-Vault, and H-Vault products;
- ability to execute on our strategy to reduce costs, in the amount and on the timing projected;
- improving the efficiency and predictability of our construction processes;
- entering into agreements with suppliers and service providers for the maintenance of our systems and other strategic relationships;
- improving the effectiveness of our sales and marketing activities and any independent sales representatives that we may engage;
- attracting and retaining key talent in a competitive marketplace;
- the amount and timing of stock-based compensation expenses;

- identifying new opportunities for other business to integrate our product into their operations;
- fluctuations in the costs of steel and raw materials, including due to the enactment of tariffs under the new U.S. presidential administration and retaliatory tariffs in response thereto; and
- delays associated with obtaining construction permits and potential regulatory review.

The implementation of our business plan and strategy may require additional capital. If we are then unable to achieve sufficient sales to generate that capital or otherwise raise capital, it may create substantial doubt about our ability to pursue our business objectives and achieve profitability or to continue as a going concern. If adequate capital is not available to us, including due to the cost and availability of funding in the capital markets, our business, operating results and financial condition may be harmed.

The development, design, construction, and sale of our energy storage systems is a capital-intensive business. As a result, we can be expected to continue to incur substantial operating expenses without generating sufficient revenues to cover expenditures. As we transition to owning our own energy storage assets, our capital needs will continue to increase. Over time, we may need to raise additional funds, including through entry into new joint venture arrangements, through the issuance of equity, equity-linked or debt securities or through obtaining credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs such as capital expenditures on our owned projects, research and development relating to our products and technologies, the construction and tooling of prototypes, the implementation of our systems for our future customers, any significant unplanned or accelerated expenses, and new strategic investments. We cannot be certain that additional capital will be available on attractive terms, if at all, when needed, which could be dilutive to stockholders, and our financial condition, results of operations, business and prospects could be materially and adversely affected. Disruptions in the global capital markets and credit markets as a result of an economic downturn, economic uncertainty, changing interest rate yield curves, changing or increased regulations, or failures of significant financial institutions could adversely affect our cash resources or access to additional capital needed for business in the future.

The Company maintains the majority of its cash and cash equivalents in accounts with major U.S. and multi-national financial institutions, and our deposits are invested in money market funds holding U.S. Treasury bills, and similarly rated agency indebtedness.

If adequate capital is not available to us, it may create substantial doubt among third parties, including suppliers and potential customers, about our ability to pursue our objectives, to achieve profitability or to continue as a going concern. Such doubt could materially and adversely impact our business, reputation and prospects.

Our energy storage systems involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis it could harm our business. Moreover, the long sales cycles for our energy storage systems and other factors may result in significant fluctuations in our results from period to period.

While our customers are increasingly familiar with our technology, the period between initial discussions with a potential customer and the sale of even a single product typically depends on a number of factors, including the potential customer's attitude towards innovative products, their budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. While our customers are evaluating our products, we have incurred, and expect to continue to incur, substantial sales, marketing, and research and development expenses to customize our products to the customer's needs. As a result, these long sales cycles may cause us to incur significant expenses without ever receiving revenue to offset those expenses.

This lengthy decision making process is followed by substantial fulfillment periods. Currently, we believe the time between the entry into a sales contract with a customer and the installation of our BESSs could range from 9 to 18 months, subject to significant risks.

These lengthy sales and installation cycles increase the risk that our customers fail to satisfy their payment obligations or cancel orders before the completion of the transaction or delay the planned date for installation.

In addition, we expect that long sales cycles and the expected limited number of customers for our energy storage systems will cause fluctuations in our operating results from period to period. As a result of how we recognize revenue and other factors beyond our control, small fluctuations in the timing of the completion of our sales transactions could also cause operating results, financial condition and results of operations to vary materially from period to period.

In addition to the other risks described herein, the following factors could also cause our financial condition and results of operations to fluctuate on a quarterly basis:

- the timing of customer installations of our energy storage systems, which may depend on many factors such as availability of inventory, product quality or performance issues, or local permitting requirements, utility

requirements, environmental, health and safety requirements, weather and customer facility construction schedules, customer interconnection timing, availability and schedule of our third-party general contractors;

- size of particular customer installations and number of sites involved in any particular quarter;
- delays or cancellations of purchases and installations;
- the timing of when control of uninstalled materials transfers to the customer;
- fluctuations in our service costs;
- weaker than anticipated demand for our energy storage systems due to changes in government regulation, incentives and policies;
- weaker than anticipated demand for our energy storage systems due to our customers' inability to finance their projects;
- interruptions in our supply chain;
- the timing and level of additional purchases by existing customers;
- unanticipated expenses incurred due to changes in governmental regulations, permitting requirements by local authorities at particular sites, utility requirements and environmental, health and safety requirements;
- disruptions in our sales, production, service or other business activities resulting from our inability to attract and retain qualified personnel;
- shortage of raw materials from our suppliers and associated price increases due to fluctuations in commodities prices; and
- availability of spare parts from our suppliers.

Finally, our revenue, key operating metrics, and other operating results in future quarters may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the price of our common stock.

Our total backlog, bookings and developed pipeline may not be indicative of our future revenue, which could have a material adverse impact on our business, financial condition, and results of operations.

Our backlog represents contracted but unrecognized revenue from projects and services yet to be completed, unrecognized revenue or other income from IP licensing agreements, and unrecognized revenue from tolling arrangements. Backlog includes any potential future variable payments from tolling and offtake arrangements that the Company believes is probable of being realized. Probable future variable payments are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable. Potential future IP royalties are not included in backlog. As of December 31, 2024, backlog totaled \$433.9 million. Backlog is a common measurement used in our industry. Our methodology for determining backlog may not, however, be comparable to the methodologies used by others. Effective in the second quarter of 2024, we updated our methodology for computing backlog. Under our previous methodology, our backlog was equivalent to our remaining performance obligations under U.S. Generally Accepted Accounting Principles ("GAAP"). We believe our new methodology for computing backlog allows us to better evaluate the growth of our Company and estimate future revenue.

Bookings represent the total aggregate contract value and total MWhs to be delivered from customer contracts signed during the period, net of the total aggregate value and total MWhs of contracts that were cancelled during the period and is calculated using the same methodologies as our backlog. For the year ended December 31, 2024 bookings totaled \$223.9 million.

Developed pipeline represents uncontracted, potential revenue, from third-party projects where potential prospective customers have either awarded the Company a project or shortlisted the Company for consideration, but not, in either case, having awarded the Company a binder order. Developed pipeline also includes potential tolling revenue from projects where the Company is in advanced negotiations to build, own, and operate energy storage systems. Developed pipeline is an internal management metric that we construct using information from our global sales team and is monitored by management to understand the potential anticipated growth of our Company and to estimate potential future revenue. Developed pipeline is influenced by the prevailing foreign exchange rates and equipment prices and may vary from period to period if these inputs change. As of December 31, 2024, developed pipeline totaled \$2.1 billion.

There can be no assurance that our backlog, bookings and developed pipeline will result in actual revenue in the future in any particular period, or at all. This is because the actual receipt, timing, and amount of revenue under contracts included

under backlog, bookings and developed contracts are subject to various contingencies, many of which are beyond our control. Our failure to realize revenue from contracts included in the total amounts estimated under backlog, bookings and developed pipeline could have a material adverse impact on our business, financial condition and results of operations.

In addition, our contracts with customers are subject to delays and cancellations. Generally, a customer can cancel an order prior to installation, and, notwithstanding the fact that a customer's termination for convenience may obligate the customer to pay us certain fees, we may be unable to recover some of our costs in connection with design, permitting, installation, and site preparations incurred prior to cancellation. Cancellation rates in our industry could increase in any given period, due to factors outside of our control including an inability to install an energy storage system at the customer's chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer, or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and certain of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business could be materially and adversely affected.

Our ability to use net operating losses and other tax attributes to offset future taxable income may be subject to certain limitations.

As of December 31, 2024, we had \$122.8 million, \$35.8 million, and \$9.8 million of federal, state and foreign net operating loss ("NOL") carryforwards, respectively, that will generally carry forward to offset future taxable income (if any), until such NOLs expire (if at all). The federal NOL carryforwards do not expire, but are subject to limitation on their use equal to 80% of the taxable income in the year of use. The state NOL carryforwards will begin to expire in 2038. \$6.8 million of the foreign net operating loss carryforwards do not expire. The remaining foreign net loss carryforwards begin to expire in 2025. Additionally, as of December 31, 2024, the Company had federal and state research tax credit carryforwards of and \$2.3 million and \$0.6 million, respectively. The federal research tax credit carryforwards will begin to expire in 2042 and the state tax research credits do not expire.

Our NOL carryforwards are subject to review and possible adjustment by the applicable tax authorities. In addition, in general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "Code"), if a corporation undergoes an "ownership change," generally defined as a cumulative change of more than 50 percentage points (by value) in its equity ownership by certain stockholders over a three-year period, the corporation's ability to use its pre-change NOL carryforwards and other pre-change tax attributes (such as research and development tax credits) to offset its post-change income or taxes may be limited. We may experience ownership changes in the future as a result of subsequent changes in our stock ownership, some of which are outside our control. Similar provisions of state and foreign tax law may apply and future regulatory changes could also limit our ability to utilize NOL carryforwards. Accordingly, we may not be able to utilize a material portion of our NOL carryforwards to offset future taxable income.

Changes in tax laws and regulations may have a material adverse effect on our business, financial condition, and result of operations.

New income, sales, use, or other tax laws, statutes, rules, regulations, or ordinances could be enacted at any time, which could affect the tax treatment of any of our future U.S. and non-U.S. earnings. Further, existing tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us. Generally, future changes in applicable U.S. and non-U.S. tax laws and regulations, or their interpretation and application, potentially with retroactive effect, could have an adverse effect on our business, financial conditions, and results of operations. We are unable to predict whether such changes will occur and, if so, the ultimate impact on our business.

We may be required to take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and stock price, which could cause you to lose some or all of your investment.

Unexpected risks may arise that cause us to write down or write off assets, restructure our operations, or incur impairment or other charges that could result in losses. Even though these charges may be noncash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. In addition, charges of this nature may cause us to violate net worth or other covenants to which we may be subject. Accordingly, our stockholders could suffer a reduction in the value of their shares.

For the year ended December 31, 2024, the Company recognized \$11.7 million in impairment charges on our investment in KORE Power, Inc. due to a decline in their financial performance.

Incorrect estimates or assumptions by management in connection with the preparation of our consolidated financial statements could adversely affect our reported assets, liabilities, income, revenue or expenses.

The preparation of our consolidated financial statements requires management to make critical accounting estimates and assumptions that affect the reported amounts of assets, liabilities, income, revenues or expenses during the reporting periods. Incorrect estimates and assumptions by management could adversely affect our reported amounts of assets, liabilities, income, revenues and expenses during the reporting periods. If we make incorrect assumptions or estimates, our reported financial results may be over- or understated, which could materially and adversely affect our business, financial condition and results of operations.

Government control of currency conversion and expatriation of funds may affect our liquidity.

We have customers and subsidiaries located in jurisdictions that impose or may impose controls on the convertibility of the local currency into foreign currencies and, in certain cases, the remittance of currency out of the jurisdiction. Therefore, we may experience delays, restrictions or limitations in completing the administrative procedures necessary to obtain and remit foreign currency to the Company, which could have a material effect on our liquidity and our business. Shortages in the availability of foreign currency in countries in which we transact, or the impossibility or difficulties in complying with the requirements and approvals of local authorities may delay, restrict or limit the ability of our customer to convert the amount owed to us to U.S. dollars and remit such amount to us, thus materially affecting our liquidity and business.

Risks Related to Our IP and Technology

We may be unable to protect, defend, maintain or enforce IP rights on which our business depends, including as against existing or future competitors, which may adversely affect our growth and success.

We rely on a combination of patent, trademark, copyright, trade secret and unfair competition laws, as well as confidentiality and other contractual provisions with our customers, suppliers, employees, and others to establish, maintain, and enforce our IP and proprietary rights. However, our rights under these laws and agreements afford us only limited protection and the actions we take to establish, maintain, and enforce our IP rights may not be adequate. For example, our owned or licensed IP rights could be challenged, invalidated, or circumvented, and we may be unable to detect when our IP rights are infringed or misappropriated. Additionally, we may be unable to effectively assert our IP rights or our IP rights may not be sufficient to provide us with a competitive advantage, any of which could have a material adverse effect on our business, financial condition or operating results.

The laws of some countries do not protect IP rights as fully as do the laws of the United States. Therefore, our IP rights may not be as strong or as easily enforced outside of the United States and efforts to protect against the unauthorized use of our IP rights, technology and other proprietary rights may be more expensive and difficult outside of the United States. Further, we have not established our IP rights in all countries in the world, and competitors may copy our designs and technology and operate in countries in which we have not prosecuted our IP. Failure to adequately protect our IP rights could result in our competitors using our IP to offer products, and competitors' ability to design around our IP would enable competitors to offer similar or better energy storage products, in each case potentially resulting in the loss of some of our competitive advantage and a decrease in our revenue, which would adversely affect our business, prospects, financial condition and operating results.

Our patents and patent applications, if issued, may not provide adequate protection to create a barrier to entry. The provisional and non-provisional patent applications that we own may not issue as patents or provide adequate protection to create a barrier to entry, which may hinder our ability to prevent competitors from selling products similar to ours.

We cannot be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. The status of patents involves complex legal and factual questions, and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued or that our patents and any patents that may be issued to us in the future will afford sufficient protection against competitors with similar technology. In addition, patent applications filed in foreign countries are subject to laws, rules, and procedures that differ from those of the United States, and thus we cannot be certain that foreign patent applications related to issued U.S. patents will be issued in other regions. Furthermore, even if these patent applications are accepted and the associated patents are issued, some foreign countries provide significantly less effective patent enforcement than in the United States.

We intend to continue to regularly assess opportunities for seeking patent and other IP protections for certain aspects of our technology, designs and methodologies that we believe provide a meaningful competitive advantage. However, our ability to do so may be limited until such time as we are able to generate sufficient cash flow from operations or otherwise raise sufficient capital to continue to invest in our IP. For example, maintaining patents in the United States and other countries requires the payment of maintenance fees, which may result in loss of our patent rights if we are unable to pay. If we are

unable to so invest in our IP, our ability to protect it or prevent others from infringing on our proprietary rights may be impaired.

In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which could increase our costs and may adversely affect our business, our prospects, and our operating results.

We may be subject to third-party claims of infringement, misappropriation or other violation of IP rights, or other claims challenging our agreements related to IP, which may be time-consuming and costly to defend, and could result in substantial liability.

Companies, organizations, or individuals, including our competitors, hold numerous patents or other IP rights related to technology used in our industry, some of which may prevent, limit, or interfere with our ability to make, use, develop, or sell our products or services, which could make it more difficult for us to operate our business. Those holding IP rights allegedly relating to our products or services could, in the future, make claims or bring suits alleging infringement, misappropriation, or other violations of such rights, or otherwise assert their rights by seeking royalties or injunctions, which may become more likely if we gain greater recognition in the market. If a claim is successfully brought in the future and we or our products or services are determined to have infringed, misappropriated, or otherwise violated a third party's IP rights, we may be required to do one or more of the following:

- cease selling or using our products or services that incorporate the challenged IP;
- pay substantial damages (including treble damages and attorneys' fees if our infringement is determined to be willful);
- obtain a license from the holder of the relevant IP rights, which may not be available on reasonable terms or at all; or
- redesign our products, services, or means of production, which may not be possible or cost-effective.

Any of the foregoing could adversely affect our business, prospects, operating results, and financial condition. In addition, any litigation or claims, whether or not valid, could harm our reputation, result in substantial costs and divert resources and management attention.

We also license technology from third parties and incorporate components supplied by third parties into our products. We may in the future face claims that our use of such technology or components infringes or otherwise violates the rights of others, which would subject us to the risks described above. We may in some cases seek indemnification from our licensors or suppliers under our contracts with them, but our rights to indemnification or our suppliers' resources may be unavailable or insufficient to cover our costs and losses.

We may be subject to claims that our employees, consultants, or advisors have wrongfully used or disclosed proprietary information or know-how of their current or former employers or claims asserting ownership of what we regard as our own IP rights.

Many of our employees, consultants, and advisors are currently or were previously employed or engaged at other companies in our field, including our competitors or potential competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed IP rights, including trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable IP rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of IP rights to execute agreements assigning such IP rights to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops IP rights that we regard as our own. Additionally, the assignment of IP rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our IP rights. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects.

We utilize open-source software, which may pose particular risks to our proprietary software and solutions.

We use open-source software in our solutions and will use open-source software in the future. Companies that incorporate open-source software into their solutions have, from time to time, faced claims challenging the use of open-source software

and compliance with open-source license terms. Some licenses governing the use of open-source software contain requirements that we make available source code for modifications or derivative works we create based upon the open-source software, and that we license such modifications or derivative works under the terms of a particular open-source license or other license granting third parties certain rights of further use. By the terms of certain open-source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available to others under open-source licenses or other unfavorable license terms. Although we monitor our use of open-source software, we cannot assure you that all open-source software is reviewed prior to use in our solutions, that our developers have not incorporated open-source software into our solutions, or that they will not do so in the future. Additionally, the terms of many open-source licenses to which we are subject have not been interpreted by U.S. or foreign courts. There is a risk that open-source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market or provide our solutions as currently marketed or provided. Companies that incorporate open-source software into their products have, in the past, faced claims seeking enforcement of open-source license provisions and claims asserting ownership of open-source software incorporated into their product. If an author or other third party were to allege that we had not complied with the conditions of an open-source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our software. As a result of our current or future use of open-source software, we may face claims or litigation, be required to release our proprietary source code, pay damages for breach of contract, re-engineer our solutions, discontinue making our solutions available in the event re-engineering cannot be accomplished on a timely basis, or take other remedial action. Any such re-engineering or other remedial efforts could require significant additional research and development resources, and we may not be able to successfully complete any such re-engineering or other remedial efforts. Further, in addition to risks related to license requirements, use of certain open-source software can lead to greater risks than use of third-party commercial software, as open-source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a negative effect on our business, financial condition, and results of operations.

Cyberattacks and other security breaches affecting, or significant interruptions to, information technology systems on which we rely could have an adverse effect on our business, operations and financial condition, including through harm to our reputation and exposure to liability.

In the ordinary course of our business, we collect, store, and transmit confidential information, including IP, proprietary business information, and personal information of customers, our employees, and contractors (collectively, “Confidential Information”). We also rely on computer systems, hardware, software, technology infrastructure, and online sites and networks for both internal and external operations that are critical to our business and the operation of our energy storage systems (collectively, “IT Systems”). We own and manage some of these IT Systems but also rely on third parties for a range of IT Systems and related products and services. We face numerous and evolving cybersecurity risks that threaten the confidentiality, integrity, and availability of our IT Systems and Confidential Information, including computer malware and viruses (e.g., ransomware), malicious code, misconfigurations, bugs or other vulnerabilities, physical or electronic break-ins, cyberattacks, phishing attacks and other social engineering schemes, employee theft or misuse, human error, fraud, denial or degradation of service attacks and attacks by sophisticated nation-state and nation-state-supported actors, terrorism, war, infrastructure changes and capacity constraints, telecommunication and electrical failures, and similar attacks or disruptions. Any of these could lead to interruption and delays in our services and operations and the loss, misuse or theft of Confidential Information.

Such attacks against online networks have become more prevalent and there is an increased likelihood they may occur on our IT Systems or those of our third-party service providers in the future. Furthermore, because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. Even if identified, we may be unable to adequately investigate or remediate incidents or breaches due to attackers increasingly using tools and techniques—including artificial intelligence—that are designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence. Due to the political uncertainty involving Russia and Ukraine, there is an increased likelihood of an escalation of tensions that could result in cyberattacks or cybersecurity incidents that may either directly or indirectly impact our operations.

We and certain of our service providers are from time to time subject to cyberattacks and security incidents. While we do not believe that we have experienced any significant system failure, accident or security breach to date, any successful attempt by cyber-attackers or other disruption to our services or IT Systems, could harm our business, result in regulatory investigations and enforcement actions, expose us to legal liability, cause us to incur material costs, including to provide required notifications to third-parties including data subjects, result in the misappropriation of funds or other IP, be

expensive to investigate and remedy and damage our reputation or brand and ability to attract and retain customers. Insurance may not be sufficient to cover significant expenses and losses related to cyberattacks or other interruptions to our systems. Efforts to prevent cyber-attackers from entering IT Systems are expensive to implement, and there can be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our IT Systems and Confidential Information, and we may not be able to ensure the implementation or enforcement of the same with respect to our third-party vendors.

We continue to implement processes and procedures designed to enable us to quickly recover from a disaster or catastrophe and continue business operations. We have tested this capability under controlled circumstances, however, there are several factors ranging from human error to data corruption that could materially impact the efficacy of such processes and procedures, including by lengthening the time services are partially or fully unavailable to customers and users. It may be difficult or impossible to perform some or all recovery steps and continue normal business operations due to the nature of a particular cyber incident, disaster or catastrophe, especially during peak periods, which could cause additional reputational damage, or loss of revenues, any of which could adversely affect our business, results of operations, and financial results. In addition, we have experienced rapid growth and may continue to grow in the future. In the event of such growth, our IT Systems may not be adequate, as currently designed, to protect us from data security breaches and other disruptions. In the future our energy storage systems and any digital platform that we develop may experience outages and other performance problems due to a variety of factors, including infrastructure changes, third-party service providers, human or software errors and capacity constraints. We may also face changes in our energy storage systems, which could lead to damages, accidents and or system disruptions. We may in the future experience blackmail for our proprietary software or any software underpinning any digital platform that we may develop, which could shut down operation of our IT Systems, those of our potential customers, or cause other damage to such systems.

We have service agreements with data center providers and other third-party service providers, and interruptions to their services, their network providers or with the systems allocating capacity among their users, including us, could adversely affect our ability to serve our customers or perform our administrative work. Our third-party service providers could decide to close their facilities without adequate notice. Any financial difficulties, such as bankruptcy or reorganization, faced by our third-party service providers or any of the service providers with whom they contract may have negative effects on our business, the nature and extent of which are difficult to predict. If our third-party service providers are unable to keep up with our needs for capacity, this could have an adverse effect on our business. In the event that our agreements with any of our third-party service providers are terminated, or we add additional cloud infrastructure service providers, we may experience significant costs or downtime in connection with the transfer to, or the addition of, new cloud infrastructure service providers. Any of the above circumstances or events may harm our reputation and brand or increase our costs, and adversely affect our business, financial condition, and results of operations.

Our systems include complex software and technology systems and do not have a meaningful history of operation, and there can be no assurance such systems and technology will perform as expected or that software, engineering or other technical defects will not be discovered until after a system is installed and operated by a customer. If our energy storage systems contain engineering or construction defects, our business and financial results could be harmed. In addition, the development and updating of these systems will require us to incur potentially significant costs and expenses.

To date, we have deployed three fully operational BESSs. Our products may contain defects in design, engineering, or construction that may cause them not to perform as expected or may require repair. Additionally, our energy storage systems use a substantial amount of software to operate which may require modification and updates over the life of such systems. Software products are inherently complex and often contain defects and errors when first introduced. These defects and errors can manifest in any number of ways in our products, including through diminished performance, security vulnerabilities, malfunctions, or even permanently disabled products. Additionally, it is difficult for us to evaluate the manufacturing and construction of our energy storage systems until there are working examples that have been manufactured, constructed, and used by us and/or our customers.

There can be no assurance that we will be able to detect and fix any defects in the hardware or software of our energy storage systems, and such defects may not become apparent until a system is installed and operated by a customer. Our energy storage systems may not perform consistent with customers' expectations or consistent with other energy storage systems which may become available. Any product defects or any other failure of our energy storage systems to perform as expected could harm our reputation and result in negative publicity, lost revenue, delivery delays, product liability claims and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects. Any defects, errors, or other vulnerabilities discovered in our software after release could allow third parties to manipulate or exploit our software, lower revenue, and expose us to claims for damages, any of which could seriously harm our business. We also could face claims for product liability, tort, or breach of warranty. Defending a lawsuit, regardless of its merit, is costly and may divert management's attention and seriously harm our reputation and our business.

In addition, further development and updating of our energy storage systems will require us to incur potentially significant costs and expenses.

Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and adversely affect our financial results.

We anticipate that our customers will depend on our support organization to resolve any technical issues relating to the hardware and software included in our systems. In addition, our sales process is likely to depend highly on the quality of our hardware and software-enabled services, on our business reputation, and on strong recommendations from our existing customers. Any failure to maintain high-quality and highly-responsive technical support, or a market perception that we do not maintain high-quality and highly-responsive support, could adversely affect our reputation, our ability to sell our products to existing and prospective customers, and our business, financial condition and results of operations.

We intend to offer technical support services alongside our systems. While we have a designated team of engineers to support our customers, they may be unable to respond quickly enough to accommodate short-term increases in demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. At our current stage, it is difficult to predict demand for technical support services and if demand were to increase significantly beyond our expectations, we may be unable to provide satisfactory support services to our customers. Additionally, increased demand for these services, without corresponding revenue, could increase costs and adversely affect our business, financial condition and results of operations.

If any of our products are or are alleged to be defective in design or manufacturing or experience other failures, we may be compelled to undertake corrective actions, which could adversely affect our business, prospects, operating results, reputation and financial condition.

Our energy storage systems are complex and incorporate technology and components that may contain design and manufacturing-related defects and errors and may in the future contain undetected defects or errors. Additionally, we have limited experience from which to evaluate the long-term performance of our energy storage systems. There can be no assurance that we will be able to detect and fix any defects in any of our energy storage system systems prior to the sale to potential consumers.

Generally, we do not manufacture the components of our energy storage systems and we rely on suppliers and subcontractors to manufacture such components. We provide installation, construction, and commissioning services for our customers that purchase our products. Although we have implemented quality control initiatives to help prevent defects and issues, defects and issues may still occur in the future that may result in significant expenses or disruptions of our operations.

Since we do not manufacture certain components of our energy storage systems, our ability to seek recourse for liabilities and recover costs from our suppliers and subcontractors depends on our contractual rights as well as the financial condition and integrity of such suppliers and subcontractors. Furthermore, our suppliers and subcontractors may be unable or not required to correct manufacturing defects or other failures of such components of our energy storage systems in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance, and our business reputation.

For BESSs, on rare occasions, lithium-ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion batteries. Any defective performance could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. Additionally, negative public perception regarding the suitability of the components in our energy applications could adversely affect our business and reputation.

Any defects or errors in product or services offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition, and results of operations:

- expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate, or work around errors or defects;
- significant re-engineering work;
- loss of existing or potential customers or partners;
- interruptions or delays in sales;
- delayed or lost revenue;

- delay or failure to attain market acceptance;
- delay in the development or release of new functionality or improvements;
- negative publicity and reputational harm;
- sales credits or refunds;
- security vulnerabilities, data breaches, and exposure of confidential or proprietary information;
- diversion of development and customer service resources;
- breach of warranty claims;
- legal claims and regulatory actions under applicable laws, rules, and regulations; and
- the expense and risk of litigation.

Risks Related to Government Regulation

Changes to U.S. tariff and import/export regulations may have a negative effect on our business, financial condition and results of operations.

The United States has recently enacted and proposed to enact significant new tariffs, as well as changes to existent tariffs. In particular, the Section 301 tariff rate on lithium-ion non-EV batteries imported from China has been amended several times since the beginning of 2025 and may continue to change.

Additionally, President Trump has directed various federal agencies to further evaluate key aspects of U.S. trade policy and there has been ongoing discussion, commentary, and action regarding potential significant changes to U.S. trade policies, treaties, and tariffs. Effective March 4, 2025, the U.S. implemented a 25% additional tariff on imports from Canada (subject to certain exceptions for energy or energy resources) and Mexico, and a 20% additional tariff on imports from China. In response to these tariffs, Canada has proposed retaliatory tariffs. On March 6, 2025, the Trump Administration announced that Canadian and Mexican goods covered by the U.S.-Mexico-Canada Agreement would not be subject to the additional 25% tariff until April 2, 2025.

As of the date of this Annual Report, discussions remain ongoing in respect of certain trade restrictions and tariffs on imports from Canada, China, and Mexico, as well as retaliatory tariffs enacted in response to such actions. In light of these events, there continues to exist significant uncertainty about the future relationship between the U.S. and other countries with respect to such trade policies, treaties, and tariffs. These developments, or the perception that any of them could occur, may have a material adverse effect on global economic conditions and the stability of global financial markets, and may significantly reduce global trade and, in particular, trade between the impacted nations and the United States. Any of these factors could depress economic activity and restrict our access to suppliers or customers and have a material adverse effect on their business, financial condition and results of operations, which in turn would negatively impact us. We have operations, customers and suppliers in the U.S., China and other countries.

Our future financial performance may depend on the continued availability of rebates, tax credits and other financial incentives. The reduction, modification, or elimination of government economic incentives could cause our revenue to decline and harm our financial results.

U.S. federal, state, local and foreign governments provide incentives to end users in the form of rebates, tax credits, and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. The range and duration of these incentives varies widely by jurisdiction. Our business may rely on these governmental rebates, tax credits, and other financial incentives to significantly lower the effective price of our energy storage systems. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy. These reductions or terminations may occur without warning. The reduction, elimination, or expiration of such incentives therefore could harm our business and cash flows.

In August 2022, the United States passed the IRA, which includes a number of government incentives that support the adoption of energy storage products and services and are anticipated to benefit the Company and its operations. Forthcoming additional guidance to implement the IRA from the U.S. Department of Treasury and other federal administrative agencies could be drafted in such manner that would not be as anticipated and may be adverse to the Company's interests and the current U.S. administration has indicated that they will be reducing or eliminating many of these incentives.

We could be liable for environmental, health, and safety (“EHS”) issues resulting from our operations, which could impact our reputation, our business, and our operating results.

We are subject to EHS laws and regulations in jurisdictions in which we operate, including those governing worker safety and the disposal of hazardous materials and wastes. EHS laws also cover other topics, such as emissions to air, water (including groundwater), and soil, noise, and impacts to natural resources, including various wildlife species, or areas, any of which we may be or become subject to in connection with our operations and projects. EHS laws and regulations can be complex and often change. These laws can give rise to strict, joint and several liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines, and penalties. Capital and operating expenses needed to comply with EHS laws and regulations can be significant, and violations may result in substantial fines and penalties or third-party damages.

Our operations involve the use of hazardous, flammable, and explosive materials in our battery and green hydrogen storage solutions. Our operations also produce hazardous wastes. We cannot eliminate the risk of contamination or injury from the generation, transportation, or disposal of such materials. In the event of contamination or injury resulting from our or our third-party manufacturers' use of, or associated with the transportation or disposal of, hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties. We maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from exposure to hazardous materials with a policy limit that we believe is customary for similarly situated companies and adequate to provide us with insurance coverage for foreseeable risks; however, this insurance may not provide adequate coverage against potential liabilities and not all workers have or may agree to our workers' compensation policy.

In addition, maintaining compliance with applicable EHS laws requires significant time and management resources and could cause delays in our ability to build out, equip and operate our facilities as well as service our installed energy storage systems, which would adversely impact our business, our prospects, our financial condition, and our operating results. In addition, EHS laws and regulations such as the Comprehensive Environmental Response, Compensation and Liability Act in the United States impose liability on several grounds including for the investigation and cleanup of contaminated soil and ground water, for building contamination, for impacts to human health and for damages to natural resources. We could incur liability under EHS laws and regulations if contamination is discovered in the future at properties formerly or currently owned, leased or operated by us, or properties to which hazardous substances were sent by us. Such liability can be strict, joint and several. We are subject to various occupational health and safety laws which may require us to incur additional costs, disrupt operations, or otherwise adversely impact our business.

Many of our customers who have agreed to purchase our energy storage systems have high standards, and any EHS noncompliance by us could harm our reputation and impact a current or potential customer's buying decision. Additionally, in many cases we contractually commit to performing all necessary installation work on a fixed-price basis, and unanticipated costs associated with environmental remediation, worker safety, and/or EHS compliance expenses may cause the cost of performing such work to exceed our revenue. The costs of complying with EHS laws, regulations, and customer requirements, and any claims concerning noncompliance or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or our operating results.

Action by governmental authorities and local residents to restrict construction or use of our systems or the projects/facilities that rely on our systems in their localities could substantially harm our business and financial results.

In the United States and elsewhere, the construction and implementation of our systems is subject to local laws, regulations, rules and agreements regarding zoning, permitting and land use. From time to time, various interest groups lobby for or against amendments to such rules that would allow potential customers to implement our systems in locations desirable to them. In certain cases, potential customers may need to petition for changes or waivers to such rules in order to be allowed to implement our systems. In all cases, governmental authorities and local residents may oppose the implementation of our systems by our potential customers, which could cause delays, potential damage to our relationships with customers and increased costs to us and our customers. If laws, regulations, rules, or agreements significantly restrict or discourage our potential customers in certain jurisdictions from purchasing and implementing our systems, or such customers from constructing the projects/facilities that will utilize our systems, it would have a material adverse effect on our business, results of operations, and financial condition. In addition, future macroeconomic pressures and public policy concerns could continue to lead to new laws and regulations, or interpretations of existing laws and regulations, that could limit our future customers' use of our systems.

Any actual or perceived failure to comply with laws, regulations and rules relating to privacy, information security, and data protection could subject us to liability, damage our reputation, increase our costs and otherwise adversely affect

our business opportunities, results of operations and financial condition. In addition, the ongoing costs of complying with such laws, regulations and rules could be significant.

We are and may become subject to various state, federal and foreign laws regarding privacy, information security and data protection. In particular, our handling of data relating to individuals is subject to a variety of laws and regulations relating to privacy, data protection, and information security, and we may become subject to additional obligations, including contractual obligations, relating to our maintenance and other processing of this data. For example, the European Union's General Data Protection Regulation, imposes stringent requirements for processing the personal data of individuals within the European Economic Area ("EEA") or in the context of our activities within the EEA and provides for significant penalties, among other things, for noncompliance.

In the U.S., certain states have adopted privacy and security laws and regulations, which govern the privacy, processing and protection of personal information. For example, the California Consumer Privacy Act, as amended by the California Privacy Rights Act, creates individual privacy rights for California individuals (including employees), increases the privacy and security obligations of entities handling certain personal information, and creates a new California data protection agency authorized to issue substantive regulations which could result in increased privacy and information security enforcement.

Laws, regulations, and other actual and potential obligations relating to privacy, data protection, and data security are evolving rapidly, and the regulatory landscape regarding privacy, data protection, and data security is likely to remain uncertain for the foreseeable future. We expect to be subject to new laws and regulations, or new interpretations of laws and regulations, in the future in various jurisdictions. These laws, regulations, and other obligations, and changes in their interpretation, could require us to modify our operations and practices, restrict our activities, and increase our costs in the future, and it is possible that these laws, regulations, and other obligations may be inconsistent with one another or be interpreted or asserted to be inconsistent with our business or practices. Any actual or perceived inability to adequately address privacy and security concerns or comply with applicable privacy and information security laws, rules and regulations, our internal policies and procedures, or our contracts governing our processing of personal information, could result in negative publicity, government investigations and enforcement actions, claims by third parties and damage to our reputation, any of which could have an adverse effect on our business, prospects, results of operations, financial position and reputation.

We are subject to anti-bribery, anti-corruption, including the U.S. Foreign Corrupt Practices Act, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures and legal expenses, any of which would adversely affect our business, financial condition and results of operations.

We are subject to anti-corruption, anti-bribery, and other similar laws and regulations in various jurisdictions in which we operate, including the U.S. Foreign Corrupt Practices Act ("FCPA"), and other anti-corruption laws and regulations. These laws generally prohibit us and our officers, directors, employees and business partners acting on our behalf, including agents, from corruptly offering, promising, authorizing or providing anything of value to obtain or retain business or otherwise obtain favorable treatment and require companies to maintain accurate books and records and a system of internal controls or adequate procedures to prevent bribery.

We are also subject to economic sanctions laws, export control laws and regulations, as well as customs regulations, in the various jurisdictions in which we operate, including those administered and enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, His Majesty's Treasury of the United Kingdom, the United Nations Security Council, the European Union (and its member states) and other relevant sanctions authorities.

We have implemented and maintain policies and procedures designed to promote compliance by us and our directors, officers, employees, representatives, consultants and agents with the FCPA, the Bribery Act and other anti-corruption laws, as well as economic sanctions and export controls. We cannot assure you, however, that any such policies and procedures will be sufficient or that directors, officers, employees, representatives, consultants and agents have not engaged, and will not engage, in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged, and will not engage, in conduct that could materially affect their ability to perform their contractual obligations to us or result in our being held liable for such conduct. Violations of the FCPA, Bribery Act, other anti-corruption laws, economic sanctions, export control laws and/or anti-money laundering and anti-terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other liabilities, as well as damage to our business continuity or brand, which could have a material adverse effect on our business, financial condition and results of operations.

Litigation, regulatory actions and compliance issues could subject us to significant fines, penalties, judgments, remediation costs, negative publicity and requirements resulting in increased expenses.

We have been and continue to be involved in legal proceedings, administrative proceedings, claims and other litigation that arise in the ordinary course of business. In addition, since our energy storage system is a new type of product in a nascent market, we may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation.

Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. To the extent such proceedings also generate negative publicity, our reputation and business could also be adversely affected. In addition, handling compliance issues and the settlement of claims could adversely affect our financial condition and results of operations.

Government reviews, inquiries, investigations, and actions could harm our business or reputation.

As we operate in various locations around the world, our operations in certain countries are subject to significant governmental scrutiny and may be adversely impacted by the results of such scrutiny. The regulatory environment with regard to our business is evolving, and officials often exercise broad discretion in deciding how to interpret and apply applicable regulations. From time to time, we receive formal and informal inquiries from various government regulatory authorities, as well as self-regulatory organizations, about our business and compliance with laws, regulations or standards.

Any determination that our operations or activities, or the activities of our employees, are not in compliance with existing laws, regulations or standards could result in the imposition of substantial fines; civil or criminal liability; interruptions of business; loss of supplier, vendor, customer or other third-party relationships; termination of necessary licenses and permits; or similar results; all of which could potentially harm our business and/or reputation. Even if an inquiry does not result in these types of determinations, regulatory authorities could cause us to incur substantial costs or require us to change our business practices in a manner materially adverse to our business and could create negative publicity, which could harm our business and/or reputation.

Risks Related to Ownership of Energy Vault's Securities

Concentration of ownership among our executive officers, directors, and their affiliates may prevent new investors from influencing significant corporate decisions.

As of December 31, 2024, our executive officers, directors and their affiliates as a group beneficially own approximately 29.7% of our outstanding common stock. As a result, these stockholders are able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, appointment and removal of officers, any amendment of the amended and restated certificate of incorporation and approval of mergers and other business combination transactions requiring stockholder approval. This control could have the effect of delaying or preventing a change of control or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

The Company qualifies as an "emerging growth company" within the meaning of the Securities Act, and in reliance on SEC guidance, takes advantage of certain exemptions from disclosure requirements available to emerging growth companies, as well as "smaller reporting companies," which could make our securities less attractive to investors and may make it more difficult to compare our performance to the performance of other public companies.

We qualify as an "emerging growth company" as defined in Section 2(a)(19) of the Securities Act, as modified by the JOBS Act. As such, the Company is eligible for and intends to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies for as long as it continues to be an emerging growth company, including (a) the exemption from the auditor attestation requirements with respect to internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act, (b) the exemptions from say-on-pay, say-on-frequency and say-on-golden parachute voting requirements and (c) reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements. The Company will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds \$700 million as of June 30 of that fiscal year, (ii) the last day of the fiscal year in which we have total annual gross revenue of \$1.235 billion or more during such fiscal year (as indexed for inflation), (iii) the date on which we have issued more than \$1 billion in non-convertible debt in the prior three-year period or (iv) December 31, 2026. In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7(a)(2)(B) of the Securities Act as long as the Company is an emerging growth company. An emerging growth company can therefore delay the adoption

of certain accounting standards until those standards would otherwise apply to private companies. We have elected not to opt out of such extended transition period and, therefore, the Company may not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Even after the Company no longer qualifies as an emerging growth company, we may in the future qualify as a “smaller reporting company,” which would allow it to continue to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements, Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements. Moreover, smaller reporting companies may choose to present only the two most recent fiscal years of audited financial statements in their Annual Reports on Form 10-K.

Investors may find the Company’s common stock less attractive because the Company will rely on these exemptions, which may result in a less active trading market for our common stock and its price may be more volatile.

There can be no assurance that our common stock will be able to continue to comply with the continued listing standards of the NYSE.

The shares of our common stock and warrants are listed on the NYSE. If the NYSE delists the common stock from trading on its exchange for failure to meet the listing standards, we and our stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for our securities;
- a determination that our common stock is a “penny stock,” which will require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock;
- a limited amount of analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

We expect to continue incurring significant increased expenses and administrative burdens as a public company, which could negatively impact our business, financial condition and results of operations.

We incur increased legal, accounting, administrative and other costs and expenses as a public company. We expect such costs and increases to be increased further after we are no longer an emerging growth company. The Sarbanes-Oxley Act, including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the Public Company Accounting Oversight Board and the securities exchanges, impose additional reporting and other obligations on public companies. Compliance with public company requirements will increase costs and make certain activities more time-consuming. A number of those requirements require us to carry out activities we have not done previously. Furthermore, if any issues in complying with those requirements are identified (for example, if the auditors identify a significant deficiency or material weaknesses in the internal control over financial reporting), we could incur additional costs to rectify those issues, and the existence of those issues could adversely affect our reputation or investor perceptions.

If, securities or industry analysts cease publishing research or reports about the Company, its business, or its market, or if they change their recommendations regarding the Company’s securities adversely, the price and trading volume of the Company’s securities could decline.

Research and reports that industry or securities analysts publish about the Company, its business, market or competitors may influence the public market for our securities. If securities or industry analysts cease coverage of the Company, the price and trading volume of our publicly traded securities would likely be negatively impacted. If any of the analysts who may cover the Company adversely change their recommendation regarding our securities, or provide more favorable relative recommendations about our competitors, the price of our publicly traded securities would likely decline. If any analyst who may cover the Company were to cease coverage of the Company or fail to regularly publish reports on us, the Company could lose visibility in the financial markets, which in turn could cause the price or trading volume of our publicly traded securities to decline.

Because we have no current plans to pay cash dividends on the Company’s common stock for the foreseeable future, you may not receive any return on investment unless you sell the Company’s common stock for a price greater than that which you paid for it.

The Company may retain future earnings, if any, for future operations and expansion and has no current plans to pay any cash dividends for the foreseeable future. Any decision to declare and pay dividends will be made at the discretion of the

Company's Board and will depend on, among other things, the Company's results of operations, financial condition, cash requirements, contractual restrictions and other factors that the Company's Board may deem relevant. In addition, the Company's ability to pay dividends may be limited by covenants of any existing and future outstanding indebtedness it or its subsidiaries incur. As a result, you may not receive any return on an investment in the Company's common stock unless you sell your shares of common stock for a price greater than that which you paid for it.

The Company may issue additional shares of common stock or other equity securities without your approval, which would dilute your ownership interests and may depress the market price of the Company's common stock.

As of December 31, 2024, the Company had warrants outstanding to purchase an aggregate 5,166,666 of private warrants. In addition, as of December 31, 2024, the Company was able to issue an aggregate of up to 40,579,962 shares of common stock pursuant to our 2022 Equity Incentive Plan and 8,000,000 shares of common stock pursuant to our 2022 Employment Inducement Plan, which amounts are inclusive of previously granted awards and which may be subject to increase from time to time. The Company may also issue additional shares of common stock or other equity securities of equal or senior rank in the future in connection with, among other things, future acquisitions or repayment of outstanding indebtedness, without stockholder approval, in a number of circumstances.

The issuance of additional shares or other equity securities of equal or senior rank would have the following effects:

- existing stockholders' proportionate ownership interest in the Company will decrease;
- the amount of cash available per share, including for payment of dividends in the future, may decrease;
- the relative voting strength of each previously outstanding share of common stock may be diminished; and
- the market price of the Company's common stock may decline.

Our stock price may be volatile or may decline regardless of our operating performance. You may lose some or all of your investment.

The trading price of our common stock is likely to be volatile. The stock market recently has experienced extreme volatility. This volatility often has been unrelated or disproportionate to the operating performance of particular companies. You may not be able to resell your shares at an attractive price due to a number of factors such as the following:

- our operating and financial performance and prospects;
- our quarterly or annual earnings or those of other companies in our industry compared to market expectations;
- conditions that impact demand for our services;
- future announcements concerning our business, our customers' businesses, or our competitors' businesses;
- the public's reaction to our press releases, other public announcements, and filings with the SEC;
- the market's reaction to our reduced disclosure and other requirements as a result of being an "emerging growth company" under the JOBS Act or relying on "smaller reporting company" exemptions;
- the size of our public float;
- coverage by or changes in financial estimates by securities analysts or failure to meet their expectations;
- market and industry perception of our success, or lack thereof, in pursuing our growth strategy;
- strategic actions by us or our competitors, such as acquisitions or restructurings;
- changes in laws or regulations which adversely affect the energy storage industry generally or Energy Vault specifically;
- changes in accounting standards, policies, guidance, interpretations, or principles;
- impacts from bank failures, reducing the financing options for the Company and its customers and suppliers;
- changes in senior management or key personnel;
- issuances, exchanges or sales, or expected issuances, exchanges, or sales of our capital stock;
- changes in our dividend policy;
- sales of shares of our common stock by significant stockholders;
- adverse resolution of new or pending litigation against us; and

- changes in general market, economic, and political conditions in the United States and global economies or financial markets, including those resulting from inflation including the effects of upward changes to the interest rate curves, natural disasters, terrorist attacks, acts of war, and responses to such events.

These broad market and industry factors may materially reduce the market price of our securities, regardless of our operating performance. In addition, price volatility may be greater if the public float and trading volume of the common stock is low. As a result, you may suffer a loss on your investment.

Activist stockholders may attempt to effect changes to our company, which could adversely affect our corporate governance, results of operations, and financial condition.

Campaigns by stockholders to effect changes at publicly traded companies are sometimes led by investors through various corporate actions, including Board nominations and proxy contests. We may become subject to one or more campaigns by stockholders who desire to increase stockholder value in the short term. If we become engaged in a proxy contest with an activist stockholder in the future, our business and operations could be adversely affected as responding to such contests or other activist stockholder actions would be costly and time-consuming, and we would expect that such actions would disrupt our operations and divert the attention of management and our employees from executing our strategic plans and product launch. In addition, if individuals are elected to our Board with a specific agenda or without relevant experience or expertise, it may adversely affect the ability of the Board to function effectively, as well as our ability to effectively and timely implement our strategic plans, which are focused on building stockholder value. Any perceived uncertainties as to our future direction as a result of stockholder activism or changes to the composition of our Board may lead to the perception of a change in the direction of our business and instability or lack of continuity with respect to our products which may cause concerns for our customers or be exploited by our competitors. As a result, we could experience significant volatility and a decline of our stock price, the loss of potential business opportunities and difficulties in attracting and retaining qualified personnel and customers.

Anti-takeover provisions in our certificate of incorporation, our bylaws and under Delaware law could make an acquisition of the Company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove the Company's current management.

Our certificate of incorporation and our bylaws contain provisions that may delay or prevent an acquisition of the Company or a change in its management. These provisions may make it more difficult for stockholders to replace or remove members of its Board. Because the Board is responsible for appointing the members of the management team, these provisions could in turn frustrate or prevent any attempt by its stockholders to replace or remove its current management. In addition, these provisions could limit the price that investors might be willing to pay in the future for shares of Company common stock. Among other things, these provisions include:

- the limitation of the liability of, and the indemnification of, its directors and officers;
- a prohibition on actions by its stockholders except at an annual or special meeting of stockholders;
- a prohibition on actions by its stockholders by written consent; and
- the ability of the Board to issue preferred stock without stockholder approval, which could be used to institute a "poison pill" that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by the Board.

Moreover, because the Company is incorporated in Delaware, it is governed by the provisions of Section 203 of the DGCL, which prohibits a person who owns 15% or more of its outstanding voting stock from merging or combining with the Company for a period of three years after the date of the transaction in which the person acquired 15% or more of the Company's outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This could discourage, delay or prevent a third party from acquiring or merging with the Company, whether or not it is desired by, or beneficial to, its stockholders. This could also have the effect of discouraging others from making tender offers for the Company's common stock, including transactions that may be in its stockholders' best interests. Finally, these provisions establish advance notice requirements for nominations for election to the Board or for proposing matters that can be acted upon at stockholder meetings. These provisions would apply even if the offer may be considered beneficial by some stockholders.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Cybersecurity Risk Management and Strategy

We have developed and implemented a cybersecurity risk management program intended to protect the confidentiality, integrity, and availability of our critical systems and information. Our cybersecurity risk management program includes a cybersecurity incident response plan.

We design and assess our program based on the National Institute of Standards and Technology Cybersecurity Framework (“NIST CSF”). This does not imply that we meet any particular technical standards, specifications, or requirements, only that we use the NIST CSF as a guide to help us identify, assess, and manage cybersecurity risks relevant to our business.

Our cybersecurity risk management program is integrated into our overall enterprise risk management program, and shares common methodologies, reporting channels, and governance processes that apply across the enterprise risk management program to other legal, compliance, strategic, operational, and financial risk areas.

Our cybersecurity risk management program includes:

- risk assessments designed to help identify material cybersecurity risks to our critical systems, information, products, services, and our broader enterprise IT environment;
- a security team principally responsible for managing our (i) cybersecurity risk assessment processes, (ii) security controls, and (iii) response to cybersecurity incidents;
- the use of external service providers, where appropriate, to assess, test or otherwise assist with aspects of our security controls;
- cybersecurity awareness training of our employees, incident response personnel, and senior management;
- a cybersecurity incident response plan that includes procedures for responding to cybersecurity incidents; and
- a third-party risk management process for service providers, suppliers, and vendors who have access to our critical systems and information.

We have not identified risks from known cybersecurity threats, including as a result of any prior cybersecurity incidents, that have materially affected or are reasonably likely to materially affect us, including our operations, business strategy, results of operations, or financial condition. For more information, see our risk factor titled “Cyberattacks and other security breaches could have an adverse effect on our business and operations, harm our reputation, and expose us to liability.”

Cybersecurity Governance

Our Board considers cybersecurity risk as part of its risk oversight function and has delegated to the Audit Committee oversight of cybersecurity and other information technology risks. The Audit Committee oversees management’s implementation of our cybersecurity risk management program.

The Audit Committee receives regular reports from the Chief Information Officer (“CIO”) on our cybersecurity risks. In addition, the CIO updates the Audit Committee, as necessary, regarding any material cybersecurity incidents, as well as any incidents with lesser impact potential.

The Audit Committee reports to the full Board regarding its activities, including those related to cybersecurity. The full Board also receives briefings from the CIO on our cyber risk management program. Board members receive presentations on cybersecurity topics from our CIO, internal security staff, or external experts as part of the Board’s continuing education on topics that impact public companies.

Our management team, including the Chief Executive Officer (“CEO”), CIO, Chief Marketing Officer, and Chief Legal Officer, is responsible for assessing and managing our material risks from cybersecurity threats. The CIO, in collaboration with the Audit Committee, has primary responsibility for our overall cybersecurity risk management program and supervises both our internal cybersecurity personnel and our retained external cybersecurity consultants.

Energy Vault’s CIO has more than 25 years of cybersecurity and risk management experience across multiple market verticals, including extensive experience overseeing critical and complex cybersecurity teams spanning multiple federal agencies and private industry. Further, the Audit Committee has a combined twelve years of experience in organizational cybersecurity and risk management.

Our management team supervises efforts to prevent, detect, mitigate, and remediate cybersecurity risks and incidents through various means, which may include briefings from internal security personnel; threat intelligence and other

information obtained from governmental, public, or private sources, including external consultants engaged by us; and alerts and reports produced by security tools deployed in the information environment.

ITEM 2. PROPERTIES

Our principal offices are located in Westlake Village, California, Vienna, Virginia, and Lugano, Switzerland. The Westlake Village office serves as our U.S. headquarters and the Lugano office serves as our international headquarters. The Westlake Village facility consists of 10,042 square feet and is under a lease that expires in December 2029. The Lugano facility is under a lease that expires in July 2027. The Vienna facility is under a lease that expires in January 2026.

ITEM 3. LEGAL PROCEEDINGS

Energy Vault has been and continues to be involved in legal proceedings that arise in the ordinary course of business, the outcome of which, if determined adversely to Energy Vault, would not individually or in the aggregate have a material adverse effect on Energy Vault's business, financial condition, and results of operations. From time to time, Energy Vault may become involved in additional legal proceedings arising in the ordinary course of its business.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information for Common Stock

Our common stock is listed on the New York Stock Exchange under the ticker symbol “NRGV.”

Holders of Record

At March 28, 2025, there were 119 holders of record of our common stock.

Dividend Policy

We have not paid any cash dividends on our common stock to date. The payment of cash dividends in the future is dependent upon our revenues and earnings, if any, capital requirements, the terms of any indebtedness, and general financial condition. The payment of any cash dividends will be within the discretion of the Board at such time. In addition, the Board is not currently contemplating and does not anticipate declaring any stock dividends in the foreseeable future.

Unregistered Sales of Equity Securities and Use of Proceeds

There were no unregistered sales of the Company’s equity securities during 2024.

Repurchase of Equity Securities

There were no repurchases of the Company’s equity securities during 2024.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis provide information which Energy Vault’s management believes is relevant to an assessment and understanding of Energy Vault’s consolidated results of operations and financial condition as of December 31, 2024 and for the fiscal year ended December 31, 2024. The discussion and analysis should be read together with our audited consolidated financial statements and related notes that are included elsewhere in this Annual report on Form 10-K. This discussion may contain forward-looking statements based upon Energy Vault’s current expectations that involve risks, uncertainties, and assumptions. Energy Vault’s actual results may differ materially from those anticipated in these forward-looking statements. You should review the section titled “Cautionary Note Regarding Forward-Looking Statements” for a discussion of forward-looking statements and the section titled “Risk Factors,” for a discussion of factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis and elsewhere in this Annual Report. Energy Vault’s historical results are not necessarily indicative of the results that may be expected for any period in the future. Unless the context otherwise requires, all references in this Annual Report to “we,” “our,” “us,” “the Company,” or “Energy Vault” refer to Energy Vault Holdings, Inc., a Delaware corporation, and its subsidiaries both prior to the consummation of and following the Merger (as defined below).

Our Business

Energy Vault provides a diverse technology portfolio of turnkey energy storage platforms, including proprietary gravity, battery, and green hydrogen energy storage hardware technologies, supported by our technology-agnostic energy management system software and integration platform. In 2024, we began a multi-year transition from providing this technology portfolio solely to third parties through a build-and-transfer model or licensing model, to also taking an ownership interest in energy storage assets in select attractive markets. We believe that our experience in the build-and-transfer business, combined with our proprietary energy storage technologies and geographical footprint, uniquely positions us to build and operate storage projects with superior efficiency and reliability.

We incorporate a customer-centric, solutions-based approach toward helping utilities, independent power producers (“IPP”), and large industrial energy users reduce their energy costs while maintaining power reliability. As the global demand for electricity increases and the world transitions to an economy powered by increasingly intermittent renewable energy such as solar and wind, the ability to provide clean, reliable, and affordable electricity to a growing global population will depend heavily on the ability to store and distribute energy at appropriate times. We are striving to create a world powered by renewable resources so that everyone will have access to clean, reliable, sustainable, and affordable energy.

Key Factors and Trends Affecting our Business

We believe that our performance and future success depend upon several factors that present significant opportunities for us, but also pose risks and challenges including those discussed below and in Part I, Item 1A. “Risk Factors.”

Development and Deployment Plan for Third-Party Sales of Energy Storage Products

We primarily rely on two models for project delivery, which are (i) EPC delivery and (ii) EEQ delivery. Under the EPC model, we generally rely on third-party EPC firms to construct our storage systems, under our supervision with dedicated teams tasked with project management. Under the EEQ model, we are responsible for the delivery of the equipment we provide, as well as resolving issues within our scope of supply.

Our cost projections are heavily dependent upon raw materials (such as steel), equipment (such as motors, batteries, inverters, and power electronic devices), and technical and construction service providers (such as engineering, procurement, construction firms).

Energy Storage Industry

The utility-scale energy storage industry is increasing at a rapid pace, driven by increased demand for electricity, global transitions toward renewable energy, and increased focus on grid resilience.

According to a report from the U.S. Department of Energy in December 2024, electricity demand is forecasted to grow substantially in the United States over the next few decades. Electricity demand is expected to be driven primarily by new data centers, artificial intelligence, new manufacturing facilities, electric vehicles, and sector-wide electrification. Electricity demand for data centers alone is expected to grow at a 13% to 27% compound annual growth rate through 2028.

Over the past decade, deployment of renewable energy resources has accelerated and there has been an industry-wide push for decarbonization, which is increasing the demand for grid-scale energy storage. A major obstacle to transitioning to renewable sources of energy such as wind and solar is the intermittent availability of these types of energy sources. Energy storage solutions are needed to balance the production intermittency of variable renewable energy to support a clean-energy future and a balanced electrical grid infrastructure. Both government mandates and companies focused on reducing energy use, cost, and emissions are expected to propel the shift to renewable sources of power.

Additionally, software solutions play a vital role in assisting energy storage owners in managing the growing complexities of renewable energy and energy storage markets. As renewable and energy storage asset portfolios expand globally, these stakeholders will need software solutions that enhance asset performance and boost revenue while reducing total ownership costs.

Our expansion of revenue depends on the ongoing adoption of energy storage solutions by our customers and our ability to source, execute, and operate energy storage projects with attractive economics. The growth of the energy storage market that we address is primarily driven by the decreasing cost of energy storage technologies, government mandates, financial incentives to reduce GHG emissions, and efforts to enhance grid stability and efficiency. These dynamics are driving demand for increased energy storage capacity and duration.

Increasing Deployment of Renewable Energy

Deployment of renewable energy resources has accelerated over the last decade, and solar and wind have become a low cost energy source. Energy storage is critical to reducing the intermittency and volatility of renewable energy generation. However, there is no guarantee that the deployment of renewable energy will occur at the rate that is expected. Inflationary pressures, supply chain disruptions, geopolitical conflicts, government regulations, and other factors could result in fluctuations in demand for and deployment of renewable energy resources, adversely affecting our revenue and ability to generate profits in the future.

Competition

The market for our products is competitive, and we may face increased competition as new and existing competitors introduce energy storage solutions and components. Furthermore, as we expand our services and digital applications in the future, we may face other competitors including software providers and hardware manufacturers that offer software solutions. If our market share declines due to increased competition or if we are not able to compete as we expect, our revenue and ability to generate profits in the future may be adversely affected.

Inflation

In the markets in which we operate, there have been higher rates of inflation in recent years. If inflation continues to increase in our markets, it may increase our expenses that we may not be able to pass through to customers. It may also increase the costs of our products that could negatively impact their competitiveness.

Government Regulation and Compliance

Federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. These statutes and regulations directly affect our owned asset business and indirectly affect our third-party sales business. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. In the United States, governments continuously modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different rates for commercial customers on a regular basis. These changes could affect our ability to deliver cost savings to our current and future customers for the purchase of electricity.

Each of our owned installations or our customer installations must be designed, constructed, and operated in compliance with applicable federal, state and local regulations, codes, standards, guidelines, policies, and laws. To install and operate energy storage systems on its platform, we, our customers or our partners, as applicable, are required to obtain applicable permits and approvals from local authorities having jurisdiction to install energy storage systems and to interconnect the systems with the local electrical utility.

U.S. Energy Storage Regulation and Legislation

The U.S. Congress is continuously reviewing and passing various climate change proposals, incentives, regulations, and legislation that may support the energy storage industry, including in the form of tax credits and incentives. The implementation of these laws can vary greatly across administrations and take long periods of time before the full extent of regulations are adopted. We cannot guarantee we will realize any or all of the anticipated benefits or incentives under any such enacted regulations or legislation, including the IRA. IRS private letter ruling 201809003 clarified that energy storage is eligible for federal tax credits if charged primarily by qualifying renewable resources.

The IRA adopted in August 2022 contains a number of tax incentive provisions that directly support the adoption of energy storage solutions and services. Before the enactment of the IRA, the Section 48 ITC did not apply to standalone energy storage projects. The IRA added Section 48(a)(3)(A)(ix) to allow a taxpayer that placed in service a standalone energy storage technology with a minimum capacity of 5 kWh to claim the ITC, if certain requirements are met. Energy storage technology that is placed in service after December 31, 2022 and started construction for U.S. federal income tax purposes prior to January 1, 2025, may claim the ITC under Section 48(a). To qualify for the full ITC rate of 30%, an energy storage project will need to satisfy certain labor requirements relating to the payment of prevailing wages and use of apprentices, or have started construction for U.S. federal income tax purposes prior to January 29, 2023. If these requirements are not met, the project may be eligible only for a base rate of 6%. The existing energy ITC will be replaced by a CEITC or “tech neutral” regime, which is available for any investment in a qualified storage facility that is placed in service after calendar year 2024 (certain labor requirements will still apply). The IRA also included bonus credits associated with the ITC, which may be relevant to our business. There is a 10% bonus credit for projects located in certain areas designated as energy communities, an additional 10% bonus credit for projects utilizing products which collectively meet certain minimum domestic content requirements, and a 10% or 20% bonus credit for certain projects less than 5 MW located in a low-income community or that serve low-income community members. Finally, the IRA included a manufacturing production tax credit for specific renewable energy and battery storage related products and components manufactured in the U.S.

We believe we may be positioned to benefit from the bonus credits related to the energy storage systems we intend to own and operate and will stimulate demand for our customers to invest in more energy storage systems. To date, the IRA regulations, proposed regulations and/or guidance issued by the U.S. Department of Treasury and Internal Revenue Service associated with these various tax credits, including but not limited to the ITC, domestic content bonus credit, energy community bonus credit, and manufacturing production tax credit have provided some substantive clarity. However, we are continuing to seek additional clarity on certain aspects of IRA guidance and/or regulation via updated guidance and future proposed and/or final regulations. The potential impact from the change in the U.S. presidential administration to any existing regulations, including any potential ramifications for the IRA and the various tax incentive provisions as well as other government and tax incentives for clean energy and energy storage in the United States, is uncertain at this stage. Some of the guidance and rulemaking enacted under the Biden Administration could be changed or modified by the Trump Administration, creating uncertainty with respect to implementation of the IRA. It remains uncertain whether Congress will modify or repeal the IRA in connection with the budget reconciliation process or otherwise. Accordingly, no assurance can be given that our projects will be eligible for tax credits or other benefits under the IRA.

Finally, recent U.S. tariff policy changes may impact our business and results of operations. The Section 301 tariff rate on lithium-ion non-EV batteries imported from China has been amended several times since the beginning of 2025 and may continue to change. These changes specifically target “batteries” as defined by U.S. Customs and Border Protection, encompassing the cubes, modules, and certain types of cells. The tariff rate on battery “parts”—including separators, electrolytes, cans, and electrodes is expected to remain at its current 25% level.

There is currently much uncertainty relating to potential changes to U.S. tariff policy. In particular, the U.S. government's recent imposition on tariffs on all imported steel may increase our costs. Changes to U.S. tariff policy may adversely impact our supply chain as well as our supply chain strategies detailed herein, both domestically and internationally, which may then have an adverse impact on our results of operations and business.

Recent Developments

In June 2024, the Company executed an engineer, procure, and construct contract with a customer to build a 200 MW/400 MWh BESS in Australia. Additionally, the Company signed a maintenance agreement with this customer to provide long-term maintenance services on the BESS after construction is completed for a 20-year period.

In June 2024, the Company implemented a series of cost savings measures, expected to result in realized cost savings of \$6.0 million to \$8.0 million annually. During the year ended December 31, 2024, the Company recognized reorganization costs of \$1.6 million, consisting of personnel reduction costs related to these cost saving measures.

On September 13, 2024, the Company was notified by the NYSE that it was not in compliance with Section 802.01C of the NYSE Listed Company Manual because the average closing price of the Company's Common Stock was less than \$1.00 over a consecutive 30 trading-day period. The notice did not result in the immediate delisting of the Company's Common Stock from the NYSE. On November 1, 2024, the Company received written notice from the NYSE informing the Company that it had regained compliance with the bid price rule as of October 31, 2024.

In October 2024 the Company executed a 10-year offtake agreement with a customer for the Cross Trails BESS that is expected to commence in June 2025. The offtake agreement includes both fixed and variable price components. The aggregate expected remaining future revenue from this contract, including variable fees that the Company believes is probable, is \$57.0 million. The variable revenues are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable.

Between October 2024 and March 2025, the Company agreed to loan Stoney Creek BESS Pty Ltd ("Stoney Creek") up to AUD 8.8 million (or \$5.5 million) to assist them in paying for BESS project development related costs. The Company also agreed to provide Stoney Creek a bank guarantee of up to AUD 2.5 million (or \$1.6 million) as security for a performance bond. On March 17, 2025, the Company entered into a share purchase agreement to acquire Stoney Creek for a nominal purchase price of one hundred Australian dollars. The closing of the acquisition is subject to regulatory review and approval in Australia. Upon closing of the acquisition, the carrying value of the note receivable is expected to be incorporated as part of the total consideration. As of the filing date of this Annual Report, the Company has loaned Stoney Creek AUD 1.4 million (or \$0.9 million).

In October, the Company executed a 100 MW/200 MWh EEQ contract to supply B-Vaults to a customer in Texas. The B-Vaults in this contract were delivered to the customer in December 2024. In December 2024, the Company executed an engineer, procure, and construct contract with a customer to build a 100 MW/200 MWh BESS in Australia. Also in December 2024, the Company executed two EEQ contracts for a combined 366.5 MWhs with a large northeastern public utility in the U.S to supply them with B-Vaults.

Key Operating Metrics

The following tables present our key operating metrics for the periods presented (amounts in thousands unless otherwise noted):

	Year Ended December 31,	
	2024	2023
New bookings	\$ 406,183	\$ 334,595
Cancellations	(182,238)	(128,819)
Net bookings	<u>\$ 223,945</u>	<u>\$ 205,776</u>
New bookings (in MWh)	1,281	800
Cancellations (in MWh)	(400)	(400)
Net bookings (in MWh)	<u>881</u>	<u>400</u>
	December 31,	
	2024	2023
Developed Pipeline ⁽¹⁾	\$ 2,085,908	
Developed Pipeline (in MWh) ⁽¹⁾	9,194	
Backlog ^{(2) (3)}	\$ 433,886	\$ 275,376
Backlog (in MWh) ^{(2) (3)}	1,574	713

⁽¹⁾ Developed pipeline is a new key operating metric that the Company began tracking during the second quarter of 2024, therefore prior period comparable figures have not been included.

⁽²⁾ The Company changed its definition of backlog during the second quarter of 2024, therefore the Company has presented the comparable amounts as of December 31, 2023 per the new definition.

⁽³⁾ As of March 17, 2025, the Company maintains a backlog of \$660.0 million and a developed pipeline of \$2.1 billion associated with additional business booked subsequent to December 31, 2024, net of any adverse impact associated with prevailing equipment costs (namely from lithium-ion battery prices and changes in foreign currency exchange rates for non-U.S. dollar denominated business).

Bookings

Net bookings represent the total aggregate contract value and total MWhs to be delivered from customer contracts signed during the period (i.e., gross bookings), net of the total aggregate value and total MWhs of contracts that were cancelled during the period. The aggregate contract value includes any potential future variable payments from tolling and offtake arrangements that the Company believes are probable of being realized. Probable future variable payments are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable. Potential future IP royalties are not included in bookings. Due to the long-term nature of our contracts, bookings are a key metric that allows us to understand and evaluate the growth of our Company and our estimated future revenue related to our customer contracts.

Developed Pipeline

Developed pipeline represents uncontracted potential revenue from third-party projects where potential prospective customers have either awarded the Company a project or shortlisted the Company for consideration. It also includes potential tolling revenue from projects where the Company is in advanced negotiations to build, own, and operate energy storage systems. Developed pipeline is an internal management metric that we construct using information from our global sales team and is monitored by management to understand the potential anticipated growth of our Company and to estimate potential future revenue. Developed pipeline is influenced by the prevailing foreign exchange rates and equipment prices and may vary from period to period if these inputs change.

Developed pipeline may not generate margins equal to our historical operating results. We have only recently begun to track our developed pipeline on a consistent basis as a performance measure, and as a result, we do not have significant experience in determining the level of realization that we may achieve on these potential contracts. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control.

Backlog

Backlog represents contracted but unrecognized revenue from projects and services yet to be completed, unrecognized revenue or other income from IP licensing agreements, and unrecognized revenue from tolling arrangements for projects operated by Energy Vault or affiliates. Backlog includes any potential future variable payments from tolling and offtake arrangements that the Company believes is probable of being realized. Probable future variable payments are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable. Potential future IP royalties are not included in backlog. Backlog is a common measurement used in our industry. Our methodology for determining backlog may not, however, be comparable to the methodologies used by others. Effective in the second quarter of 2024, we updated our methodology for computing backlog. Under our previous methodology, our backlog was equivalent to our remaining performance obligations under GAAP. We believe our new methodology for computing backlog allows us to better evaluate the growth of our Company and estimate future revenue.

We cannot guarantee that our backlog will result in actual revenue in the originally anticipated period, or at all. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control. If our backlog fails to result in revenue as anticipated or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity.

Key Components of Results of Operations

Revenue

The Company generates revenue from the sale of our energy storage products, the licensing of the Company's software solutions and IP, and from long-term service agreements to operate and maintain customer owned energy systems. To date, the Company has primarily generated revenue from the sale of our BESSs and from licensing our EVx technology. In addition to these sources of revenue, in the future we expect to generate revenue from tolling arrangements in connection with energy storage systems that we intend to own and operate.

The Company sells its BESSs under (i) an EPC model and (ii) an EEQ model. When the Company sells a BESS under the EPC model, the Company recognizes revenue over time as we transfer control of our product to the customer. Under an EEQ model, the Company recognizes revenue related to equipment sales upon delivery to the customer and service revenue over time as we provide specialized technical services to the customer.

When the Company licenses its IP, revenue is recognized at the point in time at which the customer obtains control of the licensed technology. When the Company licenses its software solutions or provides operation and maintenance services, the transaction price for each contract is recognized as revenue on a straight-line basis over the term of the contract.

Our revenue is affected by changes in the price, volume, and mix of products and services purchased by our customers, which is driven by the demand of our products, geographic mix of our customers, strength of competitor's product offerings, and the availability of government incentives to the end-users of our products.

Our revenue growth is dependent on continued growth in the number of energy storage systems constructed each year and our ability to increase our share of demand in the geographic regions where we currently compete and plan to compete in the future. Additionally, our revenue growth is dependent on our ability to find attractive projects to build, own, and operate.

Cost of Revenue

Cost of revenue primarily consists of product costs, including purchased equipment, materials and supplies, as well as costs related to subcontractors, direct labor, and product warranties.

Our cost of revenue is affected by underlying costs of equipment and materials such as batteries, inverters, enclosures, transformers, and cables, as well as the cost of subcontractors to provide construction services. We do not currently hedge against changes in the price of raw materials as we do not purchase raw materials. We purchase energy storage system components from our suppliers.

Gross Profit and Gross Profit Margin

Gross profit and gross profit margin may vary from period to period due to the timing of transferring control of significant uninstalled equipment to customers under contracts to sell energy storage systems. When control of significant uninstalled equipment is transferred to customers in a EPC project, the Company recognizes revenue in an amount equal to the cost of that equipment. The profit margin inherent in these materials is deferred until the Company fulfills its obligation to install the materials during construction of the energy storage systems. Generally, margins in an EPC project are lower in the beginning and middle stages as the equipment is delivered, and margins are higher in the later stages as the Company

performs the construction, installation, and commissioning services. As a result, gross profit and gross profit margin will vary from period to period.

Additionally, gross profit and gross profit margin may vary from period to period due to our sales volume, product prices, product costs, product mix, geographical mix, and change in estimates for warranty liabilities.

Sales and Marketing (“S&M”) Expenses

S&M expenses consist primarily of internal personnel-related costs for marketing, sales, and related support teams, as well as external costs such as professional service fees, trade shows, marketing and sales-related promotional materials, public relations expenses, website operating and maintenance costs. Personnel-related expenses include salaries, benefits, and stock-based compensation expenses.

Research and Development (“R&D”) Expenses

R&D expenses consist primarily of internal and external expenses incurred in connection with our research activities and development programs that include materials costs directly related to product development, testing and evaluation costs, construction costs including labor and transportation of material, overhead related costs and other direct expenses consisting of personnel-related expenses and consulting expenses relating to study of product safety, reliability and development. Personnel-related expenses consist of salaries, benefits, and stock-based compensation expense.

General and Administrative (“G&A”) Expenses

G&A expenses consist of information technology expenses, legal and professional fees, travel costs, and personnel-related expenses for our corporate, executive, finance, and other administrative functions, including expenses for professional and contract services. Personnel-related expenses consist of salaries, benefits, and stock-based compensation expense. To a lesser extent, general and administrative expenses include investor relations costs, insurance costs, rent, office expenses, and maintenance costs.

Provision for Credit Losses

Provision for credit losses represents the expense recognized to account for potential losses on accounts receivable, contract assets, and customer financing receivable due to customer defaults or credit deterioration. This provision reflects management’s estimate of expected credit losses based on historical trends and forward-looking assessments.

Depreciation and Amortization Expense

Depreciation and amortization expense consists of costs associated with property and equipment, and amortization of intangibles. We expect to invest in additional property, equipment, and other assets as we construct and own energy storage systems, which will result in additional depreciation expense in the future.

Loss on Impairment and Sale of Long-Lived Assets

Asset impairment and loss on sale of assets consists of losses associated with the write-down or sale of property and equipment.

Interest Income

Interest income consists of interest income from our money market funds, interest-bearing savings accounts, customer financing receivable, and convertible note receivable.

Impairment of Equity Securities

Impairment of equity securities relates to impairment of the Company’s investment in KORE Power, Inc. (“KORE”).

Results of Operations

Consolidated Comparison of Year Ended December 31, 2024 to Year Ended December 31, 2023

The following table sets forth our results of operations for the periods indicated (amounts in thousands):

	Year Ended December 31,		
	2024	2023	\$ Change
Revenue	\$ 46,199	\$ 341,543	\$ (295,344)
Cost of revenue	40,012	324,012	(284,000)
Gross profit	6,187	17,531	(11,344)
Operating expenses:			
Sales and marketing	15,839	18,210	(2,371)
Research and development	25,999	37,104	(11,105)
General and administrative	62,971	67,910	(4,939)
Provision for credit losses	29,980	150	29,830
Depreciation and amortization	1,058	893	165
Loss on impairment and sale of long-lived assets	336	—	336
Total operating expenses	136,183	124,267	11,916
Loss from operations	(129,996)	(106,736)	(23,260)
Other income (expense):			
Interest expense	(123)	(35)	(88)
Interest income	5,537	8,152	(2,615)
Impairment of equity securities	(11,730)	—	(11,730)
Other income (expense), net	566	(173)	739
Loss before income taxes	\$ (135,746)	\$ (98,792)	\$ (36,954)

Revenue

The Company recognized revenue for the product and service categories as follows for the years ended December 31, 2024 and 2023 (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Sale of energy storage products ⁽¹⁾	\$ 44,592	\$ 340,292
Operation and maintenance services	1,090	—
Software licensing	402	—
IP licensing	115	735
Other	—	516
Total revenue	\$ 46,199	\$ 341,543

⁽¹⁾ For the year ended December 31, 2023, \$0.4 million in revenue from the sale of spare energy system parts has been reclassified from "other" to "sale of energy storage products."

Revenue for the year ended December 31, 2024 decreased by \$295.3 million to \$46.2 million compared to \$341.5 million for the year ended December 31, 2023.

The decrease in revenue was primarily driven by a decrease in sales of energy storage products, resulting from a reduction in active BESS projects. In 2023, the Company had three active BESS EPC projects that made substantial progress throughout the year. However, in 2024, no BESS EPC projects experienced significant progress. During 2024, the Company completed the delivery of equipment for a single BESS EEQ project.

In 2024, revenue from operation and maintenance services, as well as software licensing, were new revenue streams for the Company. Revenue from two customers accounted for 75% and 19%, respectively, of the Company's total revenue for the year ended December 31, 2024.

Cost of Revenue

Cost of revenue for the year ended December 31, 2024 decreased by \$284.0 million to \$40.0 million compared to \$324.0 million for the year ended December 31, 2023.

Cost of revenue decreased due to the reduction in active BESS projects.

Gross Profit and Gross Profit Margin

Gross profit was \$6.2 million and gross profit margin was 13.4% for the year ended December 31, 2024, compared to gross profit of \$17.5 million and gross profit margin of 5.1% for the year ended December 31, 2023.

Gross profit decreased for the year ended December 31, 2024 compared to the year ended December 31, 2023 primarily due to a decrease in revenue. However, gross profit margin increased over the same period, driven by higher margins on energy storage product sales and the introduction of higher-margin operation and maintenance services and software licensing. The improvements in margins on energy storage product sales was attributable to the Company's active BESS EPC projects reaching their final stages in 2024, as opposed to earlier stages in 2023, as well as the Company achieving a higher margin on the EEQ contract in 2024 compared to the margins realized on EPC contracts in the prior year.

Selling and Marketing Expenses

S&M expenses decreased by \$2.4 million to \$15.8 million for the year ended December 31, 2024, compared to \$18.2 million for the year ended December 31, 2023. The decrease was primarily attributable to a decrease in personnel-related expenses of \$2.1 million and a decrease in marketing and public relation costs of \$0.4 million. The decrease in personnel-related expenses was primarily due to a reduction in headcount.

Research and Development Expenses

R&D expenses decreased by \$11.1 million to \$26.0 million for the year ended December 31, 2024, compared to \$37.1 million for the year ended December 31, 2023. The decrease was primarily attributable to a \$5.0 million decrease in personnel-related expenses, a \$3.9 million decrease in engineering and development costs, and a \$2.5 million decrease in software expenses. These decreases in costs were primarily attributable to a decrease in headcount and a focus on cost control measures.

General and Administrative Expenses

G&A expenses decreased by \$4.9 million to \$63.0 million for the year ended December 31, 2024, compared to \$67.9 million for the year ended December 31, 2023. The decrease was primarily attributable to a \$4.6 million decrease in personnel-related expenses, a \$1.2 million decrease in software expenses, and a \$0.7 million decrease in consulting costs. These cost decreases were primarily attributable to a focus on cost control measures and a reduction in headcount. Partially offsetting these cost reductions was a \$1.0 million increase in legal and professional fees.

Provision for Credit Losses

Provision for credit losses increased by \$29.8 million to \$30.0 million for the year ended December 31, 2024, compared to \$0.2 million for the year ended December 31, 2023. The increase in provision for credit losses primarily relates the Company's refundable contribution contract asset and its customer financing receivable. The refundable contribution for \$25.0 million was expected to be collected from the customer by the end of 2024, however the customer did not remit the payment. As a result, the Company increased its allowance for credit losses by \$24.0 million in 2024 due to the increased risk of non-collection.

The Company also increased its allowance for credit losses by \$4.7 million in 2024 related to its customer financing receivable. The customer did not make the first two scheduled installment payments for \$1.5 million each that were due in 2024, therefore the Company increased its allowance for credit losses due to the increased risk of non-collection.

Depreciation and Amortization Expense

Depreciation and amortization expense increased by \$0.2 million to \$1.1 million for the year ended December 31, 2024, compared to \$0.9 million for the year ended December 31, 2023. The increase is primarily attributable to capitalized software that was placed into service during 2024.

Loss on Impairment and Sale of Long-Lived Assets

For the year ended December 31, 2024, the Company recognized a loss on impairment and sale of long-lived assets of \$0.3 million, comprised of \$0.4 million in asset impairments and a \$0.1 million gain on the sale of operating equipment. The impairment relates to the write-off of leasehold improvements in the Company's Westlake Village office due to the

Company relocating its corporate office. The Company did not recognize any gains or losses from impairments or sales of equipment during the year ended December 31, 2023.

Interest Income

Interest income decreased by \$2.6 million to \$5.5 million for the year ended December 31, 2024, compared to \$8.2 million for the year ended December 31, 2023. The decrease in interest income is primarily due to a decrease in interest income from our money market funds.

Impairment of Equity Securities

For the year ended December 31, 2024, the Company recognized \$11.7 million in impairment charges on its investment in KORE due to a decline in KORE's financial performance. There was no such impairment charge in 2023.

Other Income (Expense), Net

Other income (expense), net improved by \$0.7 million to other income, net of \$0.6 million for the year ended December 31, 2024 compared to other expense, net of \$0.2 million for the year ended December 31, 2023. The improvement in other income (expense), net is primarily due to a \$1.5 million gain that resulted from the derecognition of a contract liability with a related party. In 2019, the Company received a \$1.5 million deposit for a gravity-based energy storage system from a customer that was owned by one of the Company's primary stockholders. During 2024, the Company concluded it was no longer obligated to provide the customer with the energy system and that the deposit was not refundable. As a result, the Company derecognized the liability and recognized a corresponding gain. There was no such comparable gain in 2023. Partially offsetting this gain was a \$1.0 million loss due to the change in the fair value of the Company's derivative asset - conversion option due to a decrease in the probability of the Company exercising its conversion option in DG Fuels.

Liquidity and Capital Resources

Sources of Liquidity

Since inception, we have financed our net cash used in operating and investing activities primarily through the issuance and sale of equity, and with the proceeds from the reverse recapitalization and private investment in public equity that occurred in 2022.

Furthermore, through Energy Vault's normal course of business operations, the Company has generated a sales backlog of \$660.0 million as of March 17, 2025. We expect our backlog will contribute to the funding of our business in the future, aided by a robust developed pipeline of additional business activity, which we expect to further increase contracted backlog as new agreements are signed. In addition, in order to secure non-cash backed performance bonding and surety as may be required for customers as part of our project EPC agreements, the Company works with Marsh on a global basis to use non-cash backed bonding and surety instruments with top rated insurance firms, with a capability that today stands above \$1 billion in capacity toward new projects.

Energy Vault has incurred negative operating cash flows and operating losses in the past and we may incur operating losses in the future. Energy Vault may seek additional capital through combinations of equity and/or debt financings depending on market conditions. If we are required to raise additional funds by issuing equity securities, dilution to stockholders would result. Any equity securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. The Company has previously announced its intention to raise preferred equity for project-specific financing vehicles that would not be dilutive to common shareholders and is directly tied to the projects themselves. If the Company raises funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of common stock. The terms of debt securities or borrowings could impose significant restrictions on our operations. The credit market and financial services industry have in the past, and may in the future, experience periods of uncertainty that could impact the availability and cost of equity and debt financing.

Management believes that its cash, cash equivalents, and restricted cash on hand as of the filing date of this Annual Report will be sufficient to fund our operating activities for at least the next twelve months without regard to any cash proceeds we may receive in the future upon the exercise of our private warrants.

The exercise price for our private warrants is \$11.50 per warrant, subject to certain specified adjustments. To the extent that the price of our common stock exceeds \$11.50 per share, it is more likely that our private warrant holders will exercise their warrants. To the extent that the price of our common stock declines, including a decline below \$11.50 per share, it is less likely that our private warrant holders will exercise their warrants.

Tax Credit Transfer Commitment

On March 28, 2025, the Company entered into a Tax Credit Transfer Commitment, on behalf of its wholly owned subsidiary companies, with a third-party purchaser pursuant to which the Company agreed to sell certain ITCs generated by the Calistoga Resiliency Center hybrid energy storage system, the BESS in Snyder, Texas (“Cross Trails BESS”), and the microgrid and customer demonstration unit in Snyder, Texas (“Snyder CDU”) that are anticipated to be placed in service in 2025. The Tax Credit Transfer commitment is subject to certain conditions set forth therein, and requires the Company to incur the remaining associated capital expenditures to complete the projects (via internal sources or external sources such as project financing). The third-party purchaser has agreed to purchase on or before December 15, 2025, all the eligible ITCs generated by these projects, in an amount to be finalized subject to final cost segregation reports, which management believes will be approximately \$39.9 million, net of fees, across all three projects.

ATM Facility and Equity Purchase Agreement

On November 12, 2024, we entered into an open market sales agreement with Jefferies LLC, as sales agent (the “sales agent”), pursuant to which we may, from time to time, sell shares of our common stock, having an aggregate offering price of up to \$50.0 million through the sales agent under an “at-the-market” equity offering program. We may seek, from time to time, to raise additional capital either under the Sales Agreement or otherwise.

On March 31, 2025, we entered into an equity purchase agreement (the “Equity Purchase Agreement”) with an investor (the “Equity Investor”). Pursuant to the Equity Purchase Agreement, the Company has the right at its sole discretion, but not the obligation, to sell to the Equity Investor, and the Equity Investor is obligated to purchase, up to \$25.0 million of newly issued shares of the Company’s common stock, from time to time during the term of the Equity Purchase Agreement, subject to certain limitations and conditions. If we don’t terminate the Equity Purchase Agreement on or before May 15, 2025, we will issue the Equity Investor shares of our common stock equivalent to 0.3% of our outstanding common stock as of March 28, 2025 and then have the right to sell shares to the Equity Investor at a market discount. Refer to Note 21 - *Subsequent Events* for additional details on this agreement.

Short-Term Loan

On March 31, 2025, the Calistoga Resiliency Center, LLC, a wholly-owned indirect subsidiary of the Company (the “Borrower”), entered into a credit agreement with Jefferies Finance LLC, as administrative agent, collateral agent and lender, in an aggregate principal amount of \$27.8 million (“Short-Term Loan”), which provides short-term financing while the Borrower pursues a long-term debt financing. The Short-Term Loan matures on April 23, 2025 and bears interest at an annual rate of 9.5% until April 4, 2025 and at an annual rate of 15.5% after April 5, 2025. Interest is payable at maturity. The Borrower has the option to prepay the Short-Term Loan at any time. The Short-Term Loan is secured by an escrow account that will hold the loan proceeds, subject to disbursement upon meeting certain conditions subsequent (the “Escrow Release”). Upon the Escrow Release, the Short-Term Loan would be secured by a pledge of substantially all assets of the Borrower, and an equity pledge in the Borrower. It is currently expected that Eagle Point Credit (the “Investor”) will be funding the final project financing on or about April 4, 2025.

The Short-Term Loan contains affirmative and negative covenants, certain of which become effective upon Escrow Release, including covenants restricting the Borrower’s ability to incur certain liens and indebtedness, enter into certain transactions and merge or consolidate with any other entity or the Company ceasing to own the Borrower, which, in each case, will be subject to certain limitations and exceptions. The Short-Term Loan contains mandatory repayments, representations and warranties and events of default customary for a financing of this nature.

Senior Secured Notes

Subsequent to December 31, 2024, the Calistoga Resiliency Center, LLC, entered into a financing arrangement consisting of the issuance of Senior Secured Notes due April 4, 2032 (the “Senior Notes”). The aggregate principal amount of the Senior Notes to be issued is \$27.8 million, with a purchase price of 99.25% of par value. The Senior Notes will be purchased by Eagle Point Credit (the “Investor”), and Jefferies Finance, LLC served as agent for the transaction. The Company expects that the Investor will fund the purchase of the Senior Notes on or about April 4, 2025, by purchasing the Short-Term Loan from Jefferies and converting the Short-Term Loan principal into Senior Notes.

The Senior Notes will bear interest at a rate of 12.5% per annum, until the earlier of (i) the Company’s receipt of any tax credit transfer proceeds and (ii) December 31, 2025, and thereafter at a rate of 9.50% per annum. The Senior Notes will be senior secured obligations of Calistoga Resiliency Center, LLC, and will be secured by a first-priority pledge of all assets and equity interests in the Borrower. The Senior Notes contain affirmative and negative covenants, including minimum cash reserves and a minimum debt service coverage ratio.

The Senior Notes will amortize over their term, with scheduled principal and interest payments occurring on February 28 and August 31 of each year. The amortization schedule includes an initial principal payment of \$12.9 million on August

31, 2025, followed by periodic payments as detailed in the financing agreement. A final balloon payment of \$7.0 million is due on April 4, 2032.

The Company may, at its option, redeem the Senior Notes in whole or in part prior to maturity, subject to specified call protection provisions and prepayment premiums as outlined in the agreement. In the event of a change of control, the Company may be required to offer to repurchase the Senior Notes at a specified price.

Cash, Cash Equivalents, and Restricted Cash

The following tables summarize our cash, cash equivalents, and restricted cash balances as of December 31, 2024 and 2023 (amounts in thousands):

	December 31,	
	2024	2023
Cash and cash equivalents	\$ 27,091	\$ 109,923
Restricted cash	2,982	35,632
Total cash, cash equivalents, and restricted cash	<u>\$ 30,073</u>	<u>\$ 145,555</u>

Contractual Obligations

Our principal commitments as of December 31, 2024 consisted primarily of obligations under operating leases, finance leases, warranty liabilities, a deferred pension, and issued purchase orders. Our non-cancellable purchase obligations as of December 31, 2024 totaled \$1.9 million.

Cash Flows

The following table summarizes cash flows from operating, investing, and financing activities for the periods indicated (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Net cash used in operating activities	\$ (55,860)	\$ (92,655)
Net cash used in investing activities	(58,736)	(42,542)
Net cash used in financing activities	(252)	(5,482)
Effects of exchange rate changes on cash	(634)	52
Net decrease in cash, cash equivalents, and restricted cash	<u>\$ (115,482)</u>	<u>\$ (140,627)</u>

Operating Activities

For the years ended December 31, 2024 and 2023, cash used in operating activities totaled \$55.9 million and \$92.7 million, respectively.

Cash used in operating activities during 2024 primarily consisted of a \$135.8 million net loss, adjusted for non-cash items of \$81.7 million. Significant non-cash items include \$38.7 million in stock-based compensation expense, \$11.7 million in impairment of equity securities, \$30.0 million in bad debt expense, \$1.4 million in non-cash interest income, \$1.1 million in depreciation and amortization expense, and a \$1.0 million loss due to the change in fair value of a derivative asset. Net cash used in operating activities declined during 2024 compared to 2023 primarily due to the timing of customer collections and vendor payments.

Investing Activities

For the years ended December 31, 2024 and 2023, cash used in investing activities totaled \$58.7 million and \$42.5 million, respectively.

Cash used in investing activities for the year ended December 31, 2024 primarily consisted of \$58.9 million for the purchase of property and equipment, primarily related to the construction of a hybrid energy storage system in Calistoga, California, Cross Trails BESS, and the Snyder CDU. The increase in cash used in investing activities during 2024 compared to 2023 was due to an increase in the purchase of property and equipment.

Financing Activities

During the years ended December 31, 2024 and 2023, cash used in financing activities totaled \$0.3 million and \$5.5 million, respectively.

For the year ended December 31, 2024, cash used in financing activities was primarily attributable to \$2.4 million in repayments on insurance premium financings, \$0.4 million in tax payments related to the net settlement of equity awards, and \$0.2 million in finance lease payments, partially offset by \$2.7 million in proceeds from insurance premium financings. The decrease in net cash used in financing activities during 2024 compared to 2022 was primarily due to a decrease in tax payments related to the net settlement of equity awards.

Non-GAAP Financial Measures

To complement our consolidated statements of operations and comprehensive loss, we use non-GAAP financial measures of adjusted S&M expenses, adjusted R&D expenses, adjusted G&A expenses, adjusted operating expenses, and adjusted EBITDA. Management believes that these non-GAAP financial measures complement our GAAP amounts and such measures are useful to securities analysts and investors to evaluate our ongoing results of operations when considered alongside our GAAP measures. The presentation of these non-GAAP measures is not meant to be considered in isolation or as an alternative to other measures of financial performance calculated in accordance with GAAP. These non-GAAP measures and their reconciliation to GAAP financial measures are shown below.

Beginning September 30, 2024, provision for credit losses has been treated as a non-GAAP adjustment. This change reflects management's view that this item does not accurately reflect ongoing operational performance. Prior periods have been adjusted to conform to this new presentation.

The following table provides a reconciliation from GAAP S&M expenses to non-GAAP adjusted S&M expenses (amounts in thousands):

	Year Ended December 31,	
	2024	2023
S&M expenses (GAAP)	\$ 15,839	\$ 18,210
Non-GAAP adjustments:		
Stock-based compensation expense	6,162	7,143
Reorganization expenses	288	84
Adjusted S&M expenses (non-GAAP)	<u>\$ 9,389</u>	<u>\$ 10,983</u>

The following table provides a reconciliation from GAAP R&D expenses to non-GAAP adjusted R&D expenses (amounts in thousands):

	Year Ended December 31,	
	2024	2023
R&D expenses (GAAP)	\$ 25,999	\$ 37,104
Non-GAAP adjustments:		
Stock-based compensation expense	8,693	10,057
Reorganization expenses	523	182
Adjusted R&D expenses (non-GAAP)	<u>\$ 16,783</u>	<u>\$ 26,865</u>

The following table provides a reconciliation from GAAP G&A expenses to non-GAAP adjusted G&A expenses (amounts in thousands):

	Year Ended December 31,	
	2024	2023
G&A expenses (GAAP)	\$ 62,971	\$ 67,910
Non-GAAP adjustments:		
Stock-based compensation expense	23,854	25,897
Reorganization expenses	748	318
Adjusted G&A expenses (non-GAAP)	<u>\$ 38,369</u>	<u>\$ 41,695</u>

The following table provides a reconciliation from GAAP operating expenses to non-GAAP operating expenses (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Operating expenses (GAAP)	\$ 136,183	\$ 124,267
Non-GAAP adjustments:		
Depreciation and amortization	1,058	893
Stock-based compensation expense	38,709	43,097
Provision for credit losses	29,980	150
Reorganization expenses	1,559	584
Loss on impairment and sale of long-lived assets	336	—
Adjusted operating expenses (non-GAAP)	<u>\$ 64,541</u>	<u>\$ 79,543</u>

The following table provides a reconciliation from GAAP net loss to non-GAAP adjusted EBITDA, with net loss being the most directly comparable GAAP measure (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Net loss attributable to Energy Vault Holdings, Inc. (GAAP)	\$ (135,750)	\$ (98,443)
Non-GAAP adjustments:		
Interest income, net	(5,413)	(8,117)
Provision for income taxes	67	(349)
Depreciation and amortization	1,058	893
Stock-based compensation expense	38,709	43,097
Impairment of equity securities	11,730	—
Provision for credit losses	29,980	150
Reorganization expenses	1,559	584
Gain on derecognition of contract liability	(1,500)	—
Loss on impairment and sale of long-lived assets	336	—
Change in fair value of derivative asset — conversion option	1,025	—
Foreign exchange losses	300	222
Adjusted EBITDA (non-GAAP)	<u>\$ (57,899)</u>	<u>\$ (61,963)</u>

We present adjusted EBITDA, which is net loss excluding adjustments that are outlined in the quantitative reconciliation provided above, as a supplemental measure of our performance and because we believe this measure is frequently used by securities analysts, investors, and other interested parties in the evaluation of companies in our industry. The items excluded from adjusted EBITDA are excluded in order to better reflect our continuing operations.

In evaluating adjusted EBITDA, one should be aware that in the future we may incur expenses similar to the adjustments noted above. Our presentation of adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these types of adjustments. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to net loss, operating loss, or any other performance measures derived in accordance with GAAP or as an alternative to cash flow from operating activities as a measure of our liquidity.

Our adjusted EBITDA measure has limitations as an analytical tool, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- it does not reflect our cash expenditures, future requirements for capital expenditures, or contractual commitments;
- it does not reflect changes in, or cash requirements for, our working capital needs;
- it does not reflect stock-based compensation, which is an ongoing expense;

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and our adjusted EBITDA measure does not reflect any cash requirements for such replacements;
- it is not adjusted for all non-cash income or expense items that are reflected in our consolidated statements of cash flows;
- it does not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations;
- it does not reflect limitations on or costs related to transferring earnings from our subsidiaries to us; and
- other companies in our industry may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Because of these limitations, adjusted EBITDA should not be considered as a measure of discretionary cash available to us to invest in the growth of our business or as a measure of cash that will be available to use to meet our obligations. You should compensate for these limitations by relying primarily on our GAAP results and using adjusted EBITDA only supplementally.

Critical Accounting Estimates

Our consolidated financial statements are prepared in conformity with GAAP. In preparing our financial statements, we make assumptions, judgments, and estimates based on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions and conditions.

For a summary of significant accounting policies, refer to Note 2 - *Summary of Significant Accounting Policies* of our audited consolidated financial statements included in this Annual Report on Form 10-K.

Revenue

The Company recognizes revenue over time for EPC contracts and technical services in EEQ contracts as a result of the continuous transfer of control of the products and services to the customer. The Company utilizes the percentage of completion method when recognizing revenue over time and percentage of completion is based on costs incurred as a percentage of total estimated contract costs. Since revenue recognition for these performance obligations depends on estimates, which are assessed continually during the term of the contract, recognized revenues and profits are subject to revisions as the performance obligations progresses to completion. The cumulative effects of revisions of estimated total contract costs and revenues, together with any contract reserves which may be deemed appropriate, are recorded in the period in which the facts and changes in circumstances become known. Due to uncertainties inherent in the estimation process, it is reasonably possible that these estimates will be revised in a different period.

The Company's contracts generally provide customers with a right to liquidated damages ("LDs") against Energy Vault in the event specified milestones are not met on time, or certain performance metrics are not met upon or after the substantial completion date. LDs are accounted for as variable consideration, and the contract price is reduced by the expected penalty or LD amount when recognizing revenue. Variable consideration is included in the transaction price only to the extent that it is improbable that a significant reversal in the amount of cumulative revenue recognized will occur when the uncertainty is resolved. Estimating variable consideration requires certain estimates and assumptions, including whether and by how much a project will be delayed and how a project will perform during the performance guarantee period. The existence and measurement of liquidated damages may also be impacted by the Company's judgment about the probability of favorable outcomes of customer disputes involving whether certain events qualify as force majeure or the reason for the events that caused project delays. Variable consideration for LDs is estimated using the expected value of the consideration to be received.

Allowance for Credit Losses

The Company encounters credit loss risks associated with the collection of accounts receivable, contract assets, and customer financing receivable. The accounting estimates related to the Company's allowance for credit losses is a critical accounting estimate because the underlying assumptions used for the allowance can change from time to time and credit losses could potentially have a material impact on our results of operations.

Warranty Liabilities

The accounting for warranty liabilities requires us to make assumptions and judgments, and to the extent actual results differ from original estimates, adjustments to recorded liabilities may be required. The key inputs and assumptions used in calculating estimated warranty liabilities are reviewed by management each reporting period. The Company may make additional adjustments to the estimated warranty liability based on a comparison of actual warranty results to expected results for significant differences or based on performance trends or other qualitative factors. If actual failure rates or replacement costs differ from our estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in the estimated warranty liability, which may be material.

Stock-Based Compensation

Stock-based compensation for RSUs that vest based on market conditions is estimated on the date of the grant using a Monte Carlo simulation model. The Monte Carlo simulation model requires the input of highly subjective assumptions, including the expected term of the award, the expected volatility of the Company's common stock, risk-free interest rates, and the expected dividend yield of the Company.

Emerging Growth Company Accounting Election

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, and have irrevocably elected to take advantage of the benefits of this extended transition period for new or revised standards. We are expected to remain an emerging growth company through the end of 2026 and expect to continue to take advantage of the benefits of the extended transition period. This may make it difficult or impossible to compare our financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions for emerging growth companies because of the potential differences in accounting standards used.

Recently Adopted and Issued Accounting Pronouncements

Recently issued and adopted/unadopted accounting pronouncements are described in Note 2 of the consolidated financial statements included elsewhere in this Annual Report.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position because of adverse changes in financial market prices and rates.

Foreign Currency Risk

The majority of our contracts with customers are denominated in U.S. dollars or the Australian dollar, and certain of our definitive agreements could be denominated in other currencies, including the Euro, the Swiss franc, the South African rand, the Brazilian real, and the Saudi riyal. A strengthening of the U.S. dollar could increase the cost of our solutions to our international customers, which could adversely affect our business and results of operations.

In addition, a portion of our operating expenses are incurred outside the United States and are denominated in foreign currencies, such as the euro, the Swiss franc, and the Australian dollar, and are subject to fluctuations due to changes in foreign currency exchange rates. If we increase our exposure to foreign currencies and are not able to successfully hedge against the risks associated with currency fluctuations, our results of operations could be adversely affected.

Inflation Risk

Our operations could be adversely impacted by inflation, primarily from higher material, labor, and construction costs. While it is difficult to measure the impact of inflation for such estimates accurately, we believe, if our costs are affected due to significant inflationary pressures, we may not be able to fully offset higher costs through price increases or other corrective measures, which may adversely affect our business, financial condition, and results of operations.

Credit Risk

Credit risk refers to the risk that a counterparty may default on its contractual obligations resulting in a loss to us. Our customers include the counterparties for the sale of our energy storage products and solutions and the licensees of our IP. A loss of one or more of our significant customers, their inability to perform under their contracts, or their default in payment could harm our business and negatively impact revenue, results of operations, and cash flows. Credit policies have been approved and implemented to assess our existing and potential customers with the objective of mitigating credit losses. These policies establish guidelines, controls, and credit limits to manage credit risk within approved tolerances by mandating an appropriate evaluation of the financial condition of existing and potential customers, monitoring agency

credit ratings, and by implementing credit practices that limit exposure according to the risk profiles of the counterparties. In addition, customers are required to make milestone payments based on their project's progress. We may also, at times, require letters of credit, parent guarantees, or cash collateral when deemed necessary.

Our overall exposure may be affected positively or negatively by macroeconomic or regulatory changes that may impact our counterparties. We continuously monitor the creditworthiness of all our customers.

Commodity Price Risk

We are subject to risk from fluctuating market prices of certain commodity raw materials, including cement, steel, aluminum, and lithium, that are used in the components that we purchase from our suppliers and then as inputs to our products. Prices of these raw materials may be affected by supply restrictions or other logistic costs market factors from time to time. We do not enter into hedging arrangements to mitigate commodity risk. Significant price changes for these raw materials could reduce our operating margins if suppliers increase component prices and we are unable to recover such increases from our customers and could harm our business, financial condition, and results of operations.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index of Consolidated Financial Statements for the fiscal years ended December 31, 2024 and 2023.

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Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Energy Vault Holdings, Inc.
Westlake Village, California

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Energy Vault Holdings, Inc. (the “Company”) as of December 31, 2024 and 2023, the related consolidated statements of operations and comprehensive loss, stockholders’ equity, and cash flows for each of the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2024 and 2023, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, P.C.

We have served as the Company’s auditor since 2020.

New York, New York

March 31, 2025

ENERGY VAULT HOLDINGS, INC.

Consolidated Balance Sheets
(In thousands, except par value)

	December 31,	
	2024	2023
Assets		
Current Assets		
Cash and cash equivalents	\$ 27,091	\$ 109,923
Restricted cash, current portion	990	35,632
Accounts receivable, net of allowance for credit losses of \$1,211 and \$69 as of December 31, 2024 and 2023, respectively.	14,565	27,189
Contract assets, net of allowance for credit losses of \$25,030 and \$1,113 as of December 31, 2024 and 2023, respectively.	6,798	84,873
Inventory	107	415
Customer financing receivable, current portion, net of allowance for credit losses of \$2,352 and \$375 as of December 31, 2024 and 2023, respectively.	2,148	2,625
Advances to suppliers	10,678	8,294
Investments, current portion	2,933	—
Prepaid expenses and other current assets	3,595	4,520
Assets held for sale	—	6,111
Total current assets	68,905	279,582
Property and equipment, net	99,493	31,043
Intangible assets, net	4,538	1,786
Operating lease right-of-use assets, net	1,206	1,700
Customer financing receivable, long-term portion, net of allowance for credit losses of \$3,645 and \$957 as of December 31, 2024 and 2023, respectively.	3,329	6,698
Investments, long-term portion	3,270	17,295
Restricted cash, long-term portion	1,992	—
Other assets	1,156	2,649
Total Assets	\$ 183,889	\$ 340,753
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable	\$ 20,250	\$ 21,165
Accrued expenses	24,968	85,042
Contract liabilities, current portion	8,938	4,923
Lease liabilities, current portion	499	724
Total current liabilities	54,655	111,854
Deferred pension obligation	2,044	1,491
Contract liabilities, long-term portion	—	1,500
Other long-term liabilities	934	2,115
Total liabilities	57,633	116,960
Commitments and contingencies (Note 20)		
Stockholders' Equity		
Preferred stock, \$0.0001 par value; 5,000 shares authorized, none issued	—	—
Common stock, \$0.0001 par value; 500,000 shares authorized, 153,206 issued and outstanding at December 31, 2024 and 146,577 at December 31, 2023	15	15
Additional paid-in capital	512,022	473,271
Accumulated deficit	(383,822)	(248,072)
Accumulated other comprehensive loss	(1,896)	(1,421)
Non-controlling interest	(63)	—
Total stockholders' equity	126,256	223,793
Total Liabilities and Stockholders' Equity	\$ 183,889	\$ 340,753

The accompanying notes are an integral part of these consolidated financial statements.

ENERGY VAULT HOLDINGS, INC.

Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except per share data)

	Year Ended December 31,	
	2024	2023
Revenue	\$ 46,199	\$ 341,543
Cost of revenue	40,012	324,012
Gross profit	6,187	17,531
Operating expenses:		
Sales and marketing	15,839	18,210
Research and development	25,999	37,104
General and administrative	62,971	67,910
Provision for credit losses	29,980	150
Depreciation and amortization	1,058	893
Loss on impairment and sale of long-lived assets	336	—
Total operating expenses	136,183	124,267
Loss from operations	(129,996)	(106,736)
Other income (expense):		
Interest expense	(123)	(35)
Interest income	5,537	8,152
Impairment of equity securities	(11,730)	—
Other income (expense), net	566	(173)
Loss before income taxes	(135,746)	(98,792)
Provision (benefit) for income taxes	67	(349)
Net loss	(135,813)	(98,443)
Net loss attributable to non-controlling interest	(63)	—
Net loss attributable to Energy Vault Holdings, Inc.	\$ (135,750)	\$ (98,443)
Net loss per share — basic and diluted	\$ (0.91)	\$ (0.69)
Weighted average shares outstanding — basic and diluted	149,846	142,851
Other comprehensive loss — net of tax		
Actuarial loss on pension	\$ (640)	\$ (519)
Foreign currency translation gain (loss)	165	(14)
Total other comprehensive loss attributable to Energy Vault Holdings, Inc.	(475)	(533)
Total comprehensive loss attributable to Energy Vault Holdings, Inc.	\$ (136,225)	\$ (98,976)

The accompanying notes are an integral part of these consolidated financial statements.

ENERGY VAULT HOLDINGS, INC.

Consolidated Statements of Stockholders' Equity
(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non-controlling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 2022	138,530	\$ 14	\$ 435,852	\$ (147,265)	\$ (888)	\$ —	\$ 287,713
Adoption of ASU 2016-13	—	—	—	(2,364)	—	—	(2,364)
Exercise of stock options	278	—	224	—	—	—	224
Stock-based compensation	—	—	43,097	—	—	—	43,097
Vesting of restricted stock units ("RSUs"), net of shares withheld for payroll taxes	7,769	1	(5,902)	—	—	—	(5,901)
Net loss	—	—	—	(98,443)	—	—	(98,443)
Actuarial loss on pension	—	—	—	—	(519)	—	(519)
Foreign currency translation loss	—	—	—	—	(14)	—	(14)
Balance at December 31, 2023	146,577	\$ 15	\$ 473,271	\$ (248,072)	\$ (1,421)	\$ —	\$ 223,793
Exercise of stock options	52	—	42	—	—	—	42
Stock-based compensation	—	—	38,709	—	—	—	38,709
Vesting of RSUs, net of shares withheld for payroll taxes	6,577	—	—	—	—	—	—
Net loss	—	—	—	(135,750)	—	(63)	(135,813)
Actuarial loss on pension	—	—	—	—	(640)	—	(640)
Foreign currency translation gain	—	—	—	—	165	—	165
Balance at December 31, 2024	153,206	\$ 15	\$ 512,022	\$ (383,822)	\$ (1,896)	\$ (63)	\$ 126,256

The accompanying notes are an integral part of these consolidated financial statements.

ENERGY VAULT HOLDINGS, INC.

Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,	
	2024	2023
Cash Flows From Operating Activities		
Net loss	\$ (135,813)	\$ (98,443)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	1,058	893
Non-cash interest income	(1,447)	(1,410)
Stock-based compensation expense	38,709	43,097
Loss on impairment and sale of long-lived assets	336	—
Impairment of equity securities	11,730	—
Change in fair value of derivative asset	1,025	—
Provision for credit losses	29,980	150
Foreign exchange losses	300	222
Changes in operating assets and liabilities:		
Accounts receivable	11,482	10,202
Contract assets	53,902	(57,008)
Prepaid expenses and other current assets	7,953	2,851
Advances to suppliers	(8,590)	22,797
Inventory	308	3,963
Other assets	(1,747)	(496)
Accounts payable and accrued expenses	(66,770)	25,508
Contract liabilities	3,073	(44,537)
Other long-term liabilities	(1,349)	(444)
Net cash used in operating activities	(55,860)	(92,655)
Cash Flows From Investing Activities		
Proceeds from sale of property and equipment	447	—
Purchase of property and equipment	(58,853)	(30,431)
Purchase of note receivable	(330)	—
Purchase of property and equipment held for sale	—	(6,111)
Purchase of equity securities	—	(6,000)
Net cash used in investing activities	(58,736)	(42,542)
Cash Flows From Financing Activities		
Proceeds from exercise of stock options	42	224
Proceeds from insurance premium financing	2,745	1,250
Payment of taxes related to net settlement of equity awards	(408)	(6,017)
Repayment of insurance premium financings	(2,446)	(892)
Payment of finance lease obligations	(185)	(47)
Net cash used in financing activities	(252)	(5,482)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(634)	52
Net decrease in cash, cash equivalents, and restricted cash	(115,482)	(140,627)
Cash, cash equivalents, and restricted cash – beginning of the period	145,555	286,182
Cash, cash equivalents, and restricted cash – end of the period	30,073	145,555
Less: restricted cash at end of period	2,982	35,632
Cash and cash equivalents - end of period	\$ 27,091	\$ 109,923

ENERGY VAULT HOLDINGS, INC.

Consolidated Statements of Cash Flows (Continued)
(In thousands)

	Year Ended December 31,	
	2024	2023
Supplemental Disclosures of Cash Flow Information:		
Income taxes paid	\$ 52	\$ 46
Cash paid for interest	123	35
Supplemental Disclosures of Non-Cash Investing and Financing Information:		
Actuarial loss on pension	(640)	(519)
Property and equipment financed through accounts payable and accrued expenses	6,400	5,051
Assets acquired on finance lease	60	108

The accompanying notes are an integral part of these consolidated financial statements.

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

NOTE 1. ORGANIZATION AND DESCRIPTION OF BUSINESS

Energy Vault Holdings, Inc., which together with its subsidiaries is referred to herein as “Energy Vault” or the “Company”, develops and deploys utility-scale energy storage solutions designed to aid in the global transition to a clean energy future. The Company’s mission is to provide energy storage solutions to accelerate the global transition to renewable energy.

The Company primarily relies on two models for project delivery, which are (i) EPC delivery and (ii) EEQ delivery. Under the EPC model, we generally rely on third-party EPC firms to construct our storage systems, under our supervision with dedicated teams tasked with project management. Under the EEQ model, we are responsible for the delivery of the equipment we provide, as well as resolving issues within our scope of supply.

Our current business model options include:

- Selling energy storage products to third-parties, including constructing and delivering fully operational energy storage systems under an EPC model and delivering energy storage equipment under an EEQ model;
- Building, operating, and holding energy storage systems as equity (co-) sponsor that may provide recurring revenue in the future;
- Taking a minority stake in an energy storage project where we provide EPC, EEQ, or long-term services, allowing us to participate in the project’s long-term economics while strengthening alignment with strategic customers;
- Recurring software revenue through licensing software for asset management and use case applications;
- Recurring service revenue through long term service agreements, and;
- IP licenses and royalties associated with our energy storage technologies that may provide recurring revenues in the future.

Energy Vault was originally incorporated under the name Novus Capital Corporation II as a special purpose acquisition company in the state of Delaware in September 2020 with the purpose of effecting a merger with one or more operating businesses. On September 8, 2021, Novus announced that it had entered into a merger agreement with Legacy Energy Vault that would result in a merger (the “Merger”). Upon the closing of the Merger on February 11, 2022, Novus was immediately renamed to “Energy Vault Holdings, Inc.” The Merger between Novus and Legacy Energy Vault was accounted for as a reverse recapitalization.

Throughout the notes to the consolidated financial statements, unless otherwise noted, the “Company,” “we,” “us,” or “our” and similar terms refer to Legacy Energy Vault and its subsidiaries prior to the consummation of the Merger, and Energy Vault and its subsidiaries after the consummation of the Merger.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES***Basis of Presentation***

The accompanying consolidated financial statements have been prepared on an accrual basis of accounting in accordance with GAAP and applicable rules and regulations of the SEC regarding financial reporting.

Principles of Consolidation

These consolidated financial statements include Energy Vault Holdings, Inc., its wholly owned subsidiaries, and a majority owned subsidiary. All intercompany balances and transactions have been eliminated in consolidation.

Emerging Growth Company

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company's consolidated financial statement with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Use of Estimates

The preparation of the consolidated financial statements, in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. The Company evaluates its assumptions on an ongoing basis. The Company's management believes that the estimates, judgment, and assumptions used are reasonable based upon information available at the time they are made. Estimates made by management include, among others, revenue recognition, provision for credit losses, warranty accruals, and stock-based compensation. Due to the inherent uncertainty involved in making assumptions and estimates, changes in circumstances could result in actual results differing from those estimates, and such differences could be material to the Company's consolidated financial condition and results of operations.

Liquidity

The accompanying financial statements have been prepared assuming the Company will continue as a going concern, which contemplates continuity of operations, realization of assets, and the satisfaction of liabilities and commitments in the normal course of business.

Since our inception in October 2017, we have incurred significant net losses and have used significant cash in our business. As of December 31, 2024 and 2023, we had accumulated deficits of \$383.8 million and \$248.1 million, respectively, and net losses of \$135.8 million and \$98.4 million, respectively, for the years ended December 31, 2024 and 2023. We anticipate that we will incur net losses for the foreseeable future and there is no guarantee that we will achieve or maintain profitability.

The assessment of liquidity requires management to make estimates of future activity and judgments about whether the Company can meet its obligations and have adequate liquidity to operate. Subsequent to December 31, 2024, the Company took various actions to enhance its liquidity position, which included:

- Executing Calistoga Resiliency Center hybrid energy storage system financing arrangements for an aggregate principal amount of \$27.8 million.
- Executing a Tax Credit Transfer Commitment with a third-party purchaser pursuant to which the Company agreed to sell the ITC generated by the Calistoga Resiliency Center hybrid energy storage system associated with above project financing. The agreement also allows the Company to sell the ITCs for the Cross Trails BESS and Snyder CDU microgrid, pending project financing and completion of the construction capital expenditures.
- Executing an Equity Purchase Agreement with an Equity Investor, in which the Company has the right at its sole discretion, but not the obligation, to sell to the Equity Investor, and the Equity Investor is obligated to purchase, up to \$25.0 million of newly issued shares of the Company's common stock.

Management believes that its cash, cash equivalents, and restricted cash on hand as of the filing date of this Annual Report, along with the actions taken subsequent to December 31, 2024, will be sufficient to fund our operating activities for at least the next twelve months. Refer to Note 21 - *Subsequent Events* for further details on the transactions executed subsequent to December 31, 2024.

Segment Reporting

The Company reports its operating results and financial information in one operating and reportable segment. Our chief operating decision maker ("CODM"), which is our chief executive officer, reviews our operating results on a consolidated basis and uses that consolidated financial information to make operating decisions, assess financial performance, and allocate resources.

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

Concentration of Credit and Other Risks

Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash, accounts receivable, and customer financings receivable.

Risks associated with cash and cash equivalents and restricted cash are mitigated by banking with creditworthy institutions. Such balances with any one institution may, at times, be in excess of federally insured amounts.

As of December 31, 2024, one customer accounted for 100% of accounts receivable. As of December 31, 2023, one customer accounted for 92% of accounts receivable.

As of December 31, 2024 and 2023, one customer accounted for 100% of the customer financing receivable.

Revenue from two customers accounted for 75% and 19% of total revenue, respectively, for the year ended December 31, 2024 and revenue from three customers accounted for 64%, 22%, and 13% of total revenue, respectively, for the year ended December 31, 2023.

Foreign Currency

Assets and liabilities denominated in a foreign currency are translated into U.S. dollars using the exchange rates in effect at the balance sheet date. Revenue and expense accounts are translated at the average exchange rates during the periods. The impact of exchange rate fluctuations from translation of assets and liabilities is included in accumulated other comprehensive loss, a component of stockholders' equity. As of December 31, 2024, accumulated other comprehensive loss included a \$0.1 million loss related to currency translation adjustments. As of December 31, 2023, accumulated other comprehensive loss included a \$0.3 million loss related to currency translation adjustments.

Gains and losses resulting from foreign currency transactions are included in other income (expense), net in the accompanying consolidated statements of operations and comprehensive loss.

Fair Value Measurements

ASC 820, *Fair Value Measurement* ("ASC 820"), establishes a fair value hierarchy for instruments measured at fair value that distinguishes between assumptions based on market data (observable inputs) and the Company's own assumptions (unobservable inputs). Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the inputs that market participants would use in pricing the asset or liability and are developed based on the best information available in the circumstances. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The accounting guidance establishes a three-tiered hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value as follows:

Level I — Inputs which include quoted prices in active markets for identical assets and liabilities.

Level II — Inputs other than Level I that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level III — Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

Revenue Recognition

The Company recognizes revenue from contracts with customers in accordance with ASC 606, *Revenue from Contracts with Customers* ("ASC 606"). Under ASC 606, revenue is recognized when, or as, control of promised goods and services is transferred to customers, and the amount of revenue recognized reflects the consideration to which the Company expects to be entitled in exchange for the goods and services transferred. The Company determines revenue recognition through the following steps:

- (1) Identification of the contract, or contracts, with a customer.
- (2) Identification of the performance obligations in the contract.

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

- (3) Determination of the transaction price.
- (4) Allocation of the transaction price to the performance obligations in the contract.
- (5) Recognition of revenue when, or as, a performance obligation is satisfied.

Once a contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. The Company assesses if these options provide a material right to the customer and if so, they are considered performance obligations. The identification of material rights requires judgments related to the determination of the value of the underlying good or service relative to the option exercise price.

The Company assesses whether each promised good or service is distinct for the purposes of identifying performance obligations in the contract. This assessment involves subjective determination and requires management to make judgments about the individual promised goods or services and whether such are separable from the other aspects of the contractual relationship. Promised goods and services are considered to be distinct provided that: (i) the customer can benefit from the good or service either on its own or together with the other resources that are readily available to the customer (that is, the good or service is capable of being distinct) and (ii) the entity's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract (that is, the promise to transfer the good or service is distinct within the context of the contract). The Company also considers the intended benefit of the contract in assessing whether a promised good or service is separately identifiable from other promises in the contract. If a promised good or service is not distinct, an entity is required to combine that good or service with other promised goods or services until it identifies a bundle of goods or services that is distinct.

The transaction price is determined and allocated to the identified performance obligations in proportion to their stand-alone selling prices ("SSP") on a relative SSP basis. SSP is determined at contract inception and is not updated to reflect changes between contract inception and when the performance obligations are satisfied. Determining the SSP for performance obligations requires significant judgment. In developing the SSP for a performance obligation, the Company considers applicable market conditions and relevant entity-specific factors, including factors that were contemplated in negotiating the agreement with the customer and estimated costs.

In determining the transaction price, the Company adjusts consideration for the effects of the time value of money if the timing of payments provides the Company with a significant benefit of financing. When a contract provides the customer with a significant benefit of financing, the Company recognizes a customer financing receivable and recognizes interest income separate from the revenue recognized on the contracts with customers. The Company does not assess whether a contract has a significant financing component if the expectation at contract inception is such that the period between payment and the transfer of the promised goods or services will be one year or less.

The Company recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied, either at a point in time or over time. Over time revenue recognition is based on the use of an output or input method.

Sale of Energy Storage Products: The Company sells its energy storage products to utility companies and independent power producers. The Company enters into (i) engineering, procurement, and construction ("EPC") contracts to design, construct, install, and transfer fully operational energy storage systems and (ii) engineered equipment ("EEQ") contracts to design and deliver energy storage equipment. Each storage project is customized depending on the customer's energy storage needs.

Customer payments are due upon meeting certain milestones that are consistent with contract-specific phases of a project. The Company determines the transaction price based on the consideration expected to be received, which includes estimates of liquidated damages or other variable consideration. Generally, each EPC contract contains one performance obligation to design, construct, install, and deliver a fully operational energy storage system. Generally each EEQ contract contains multiple performance obligations, including separate performance obligations (i) to supply equipment and (ii) to provide specialized technical services. Multiple contracts entered into with the same customer and near the same time are combined in accordance with ASC 606. In these situations, the contract prices are aggregated and then allocated to each performance obligation based upon their relative stand-alone selling price.

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For EPC contracts, the Company recognizes revenue over time as a result of the continuous transfer of control of its products to the customer. The continuous transfer of control to the customer is supported by clauses in the contracts that provide enforceable rights to payment of the transaction price associated with work performed to date for products that do not have an alternative use to the Company and/or the project is built on the customer's land that is under the customer's control. For equipment sales in EEQ contracts, the Company recognizes revenue at a point in time, which corresponds to delivery of the equipment to the customer. For technical services provided in EEQ contracts, the Company recognizes revenue over time as the Company performs the required services.

Revenue for performance obligations satisfied over time is recognized using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs. Contract costs include all direct materials and labor costs related to contract performance. Pre-contract costs with no future benefit are expensed in the period in which they are incurred. Since the revenue recognition of these contracts depends on estimates, which are assessed continually during the term of the contract, recognized revenues and profit are subject to revisions as the contract progresses to completion. The cumulative effects of revisions of estimated total contract costs and revenues, together with any contract reserves which may be deemed appropriate, are recorded in the period in which the facts and changes in circumstances become known. Due to uncertainties inherent in the estimation process, it is reasonably possible that these estimates will be revised in a different period. When a loss is forecasted for a contract, the full amount of the anticipated loss is recognized in the period in which it is determined that a loss will incur.

The Company's contracts generally provide customers the right to liquidated damages ("LDs") against Energy Vault in the event specified milestones are not met on time, or certain performance metrics are not met upon or after the substantial completion date. LDs are accounted for as variable consideration, and the contract price is reduced by the expected penalty or LD amount when recognizing revenue. Variable consideration is included in the transaction price only to the extent that it is improbable that a significant reversal in the amount of cumulative revenue recognized will occur when the uncertainty is resolved. Estimating variable consideration requires certain estimates and assumptions, including whether and by how much a project will be delayed. The existence and measurement of liquidated damages may also be impacted by the Company's judgment about the probability of favorable outcomes of customer disputes involving whether certain events qualify as force majeure or the reason for the events that caused project delays. Variable consideration for LDs is estimated using the expected value of the consideration to be received. If Energy Vault has a claim against the customer for an amount not specified in the contract, such claim is recognized as an increase to the contract price when it is legally enforceable, which is usually upon signing a respective change order or equivalent document confirming the claim acceptance by the customer.

The Company offers limited warranties on its energy storage products which provide the customer assurance that the products will function as the parties intended because it complies with agreed-upon specifications and are free from defects. These assurance-type warranties are not treated as a separate revenue performance obligation and are accounted for as guarantees under GAAP.

Own and Operate Energy Storage Projects: To date, the Company has not recognized any revenue from its owned energy storage systems. The Company has entered into tolling agreements in which the Company will sell the energy produced by its energy storage systems. These arrangements are expected to be accounted for under ASC 842, *Leases*, and accounting recognition does not begin until an energy storage system is made available to a customer. This method of revenue recognition will be finalized upon the commencement of one of the Company's owned energy storage projects.

Software Licensing: The Company licenses its energy management software solutions to customers. Software licensing customers do not receive legal title or ownership of the software. Customers receive access to the software platform and related support services as part of a software licensing contract. We consider these obligations to be a series of distinct services that comprise a single performance obligation because they are substantially the same and have the same pattern of transfer. Revenue is recognized over time on a straight-line basis over the term of the contract.

Long-Term Service Arrangements: The Company enters into long-term service arrangements to provide operation and maintenance services to customer-owned energy storage systems. The Company accounts for this service as a separate performance obligation from the sale of energy storage products. Revenue is recognized over time on a straight-line basis over the term of the contract. The Company believes using a time-based method to measure progress is appropriate as the performance obligation is satisfied evenly over the term of the services.

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Licensing of IP: The Company enters into licensing agreements of its IP that are within the scope of ASC 606. The terms of such licensing agreements include the license of functional IP, given the functionality of the IP is not expected to change substantially as a result of the licensor's ongoing activities. The transaction price allocated to the licensing of IP is recognized as revenue at a point in time when the licensed IP is made available for the customer's use and benefit. Certain licensing agreements contain a significant financing component due to the customer having extended payment terms. The amounts due from customers under extended payment terms are included in the line item, customer financing receivable, on the consolidated balance sheets.

Royalty Revenue: In connection with entering into IP licensing agreements, the Company also enters into royalty agreements whereby the customer agrees to pay the Company a percentage of the customer's future sales revenue that is generated by using the Company's IP. The Company has not recognized any royalty revenue to date, but will recognize royalty revenue at the point in time when the customer's sales occur.

Cash, Cash Equivalents, and Restricted Cash

The Company considers all highly liquid investments purchased with an original or remaining maturity of three months or less to be cash equivalents. At December 31, 2024, the Company maintained investments in money market accounts totaling \$9.9 million, including \$9.5 million in U.S. government money market funds. At December 31, 2023, the Company maintained money market funds totaling \$98.4 million, including \$98.0 million in U.S. government money market funds.

Restricted cash as of December 31, 2024 and 2023 primarily consisted of cash held by banks as collateral for the Company's letters of credit.

Accounts Receivable

Accounts receivable represents amounts that have an unconditional right to consideration, have been billed to customers, and do not bear interest. Receivables are carried at the original invoiced amount, less an allowance for any potential uncollectible amounts.

Customer Financing Receivable

Customer financing receivable includes amounts due from a customer related to a licensing agreement under extended payment terms which contains a significant financing component. An interest rate is not stated in this agreement and is imputed using the effective interest method when recognizing interest income. The imputed interest rate on the note is 8.5%. Interest income on the customer financing receivable was \$0.8 million and \$0.9 million for the years ended December 31, 2024 and 2023, respectively.

Effective December 31, 2024, the Company placed the customer financing receivable on non-accrual status and has discontinued the accrual of future interest income. The Company placed the customer financing receivable in non-accrual status because the customer did not make its first two installment payments in 2024, and both installments are more than 90 days past due as of December 31, 2024.

The amortized cost basis for the Company's customer financing receivable was \$11.5 million and \$10.7 million as of December 31, 2024 and 2023, respectively.

Allowance for Credit Losses

The Company estimates expected uncollectible amounts related to its accounts receivable, customer financing receivable, and contract asset balances as of the end of each reporting period, and presents those financial asset balances net of an allowance for expected credit losses in the consolidated balance sheets. Due to the Company's limited operating history, the Company generally utilizes a probability-of-default ("PD") and loss-given-default ("LGD") methodology to calculate the allowance for credit losses for each customer by type of financial asset. The Company derives its PD and LGD rates using historical rates for corporate bonds as published by Moody's. The Company uses PD and LGD rates that correspond to the customer's credit rating and period of time in which the financial asset is expected to remain outstanding.

For significantly past due receivables, such as the customer financing receivable and refundable contribution (defined in Note 3), the Company determines specific allowances for each receivable.

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Inventory

Inventory consists of equipment and spare parts, which are used in ongoing battery storage projects for sale. Inventory is stated at the lower of cost or net realizable value with cost being determined by the specific identification method. Costs include the cost of purchase and other costs incurred in bringing the inventories to their present location and condition. The Company periodically reviews its inventory for potential obsolescence and write down of its inventory, as appropriate, to net realizable value based on its assessment of market conditions.

Assets held for sale

The Company classifies assets to be disposed of as held for sale in the period in which they are available for sale in their present condition and when the sale is probable and expected to be completed within one year. Assets classified as held for sale are measured at the lower of their carrying amount or fair value less costs to sell. Further, the Company does not record depreciation and amortization expense on assets that are classified as held for sale.

Property and Equipment, Net

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets. Maintenance and repairs are charged to expense as incurred. When assets are retired or sold, the cost and related accumulated depreciation are removed from the consolidated balance sheet and any resulting gain or loss is reflected in operating expenses in the period realized.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, primarily comprised of property and equipment, intangible assets, and operating right-of-use assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount to the future undiscounted net cash flows which the assets are expected to generate. If the carrying value of the assets exceeds the sum of the estimated future cash flows, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceed their fair value.

Intangible Assets

The Company's intangible assets consist of software development costs related to software to be sold or leased externally. These development costs are capitalized upon the establishment of technological feasibility for a product in accordance with ASC 985-20, *Software - Costs of Software to be Sold, Leased, or Marketed*. Amortization of capitalized software costs begins at the time that each software product becomes available for general release to customers. Once a software application is available for general release and is placed in service, the Company amortizes the capitalized costs on a product basis by the greater of the straight-line method over the estimated economic life of the product, or the ratio that current gross revenues for a product bear to the total current and anticipated future gross revenues for that product. The useful life of our external-use software development costs is generally expected to be 5 years.

Investment in Equity Securities

During 2022 and 2023, the Company made a strategic investment and purchased equity securities in KORE, a U.S. manufacturer of battery cells and modules. The Company's ownership in KORE does not provide the Company with the ability to exercise significant influence. These equity securities do not have a readily determinable fair value and are recorded at cost, less any impairment, plus or minus adjustments related to observable transactions for the same or similar securities, with unrealized gains and losses included in earnings. The carrying value of the Company's investment in equity securities is included in the line item, investments, long term portion, in the consolidated balance sheets.

Leases

The Company determines if a contract contains a lease at its inception based on whether or not the Company has the right to control the asset during the contract period and other facts and circumstances. Right-of-use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease.

ROU assets are classified as either operating or finance leases. Upon commencement of the lease, a ROU asset and corresponding lease liability are recognized for all operating and finance leases. The Company has elected the short-term

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lease exemption, which does not require a ROU asset or lease liability to be recognized when the lease term is 12 months or less and does not include an option to purchase the underlying asset that the lessee is reasonably certain to exercise.

Upon commencement of the lease, ROU assets are recognized based on the initial measurement of the lease liability and adjusted for any lease payments made before commencement date of the lease, less any lease incentives and including any initial direct costs incurred. Lease liabilities are initially measured at the present value of future minimum lease payments over the lease term.

The discount rate used to determine the present value is the rate implicit in the lease unless that rate cannot be determined, in which case Company's incremental borrowing rate is used, which is based on the estimated interest rate for collateralized borrowing over a similar term of the lease at commencement date.

Rights to extend or terminate a lease are included in the lease term when there is reasonable certainty the right will be exercised. Factors used to assess reasonable certainty of rights to extend or terminate a lease include current and forecasted lease improvement plans, anticipated changes in development strategies, historical practice in extending similar contracts and current market conditions.

Operating lease expense is recognized on a straight-line basis over the lease term. Finance lease ROU assets are amortized on a straight-line basis over the lesser of the lease term or the estimated useful life of the leased asset. Amortization of finance lease ROU assets is included in depreciation and amortization.

Operating lease ROU assets are recognized on the consolidated balance sheets in the line item, operating lease right-of-use assets, and finance lease ROU assets are recognized on the consolidated balance sheets within the line item, property and equipment, net.

Defined Benefit Pension Obligation

The Company's wholly owned subsidiary in Switzerland has a defined benefit pension obligation covering retirement and other long-term benefits of the local employees. Accrued pension costs are developed using actuarial principles and assumptions which consider a number of factors, including estimates for the discount rate, expected long-term rate of return on assets and mortality. Changes in these estimates would impact the amounts that the Company records in the consolidated financial statements.

Warrants

The Company accounts for warrants for shares of the Company's common stock that are not indexed to its own stock as liabilities at fair value on the consolidated balance sheets. The warrants are subject to remeasurement at each balance sheet date and any change in fair value is recognized in the Company's consolidated statements of operations and comprehensive loss. For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in-capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded as a liability at their initial fair value on the date of issuance, and each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss in the consolidated statements of operations and comprehensive loss.

Earn-Out Shares

In connection with the Merger, eligible Legacy Energy Vault stockholders immediately prior to the Closing, have the contingent right to receive an aggregate of 9.0 million shares of the Company's common stock ("Earn-Out Shares") upon the Company achieving each Earn-Out Triggering Event (defined below) during the period beginning on the 90th day following the closing of the Merger and ending on the third anniversary of such date. An "Earn-Out Triggering Event" means the date on which the closing price of the Company's common stock quoted on the NYSE is greater than or equal to certain specified prices for any 20 trading days within a 30 consecutive day trading period.

The Earn-Out Shares were recognized at fair value upon the closing of the Merger and classified in stockholders' equity. Because the Merger was accounted for as a reverse recapitalization, the issuance of the Earn-Out Shares was treated as a deemed dividend and since the Company does not have retained earnings, the issuance was recorded within additional-paid-in capital ("APIC") and had a net nil impact on APIC.

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Research and Development Expenses

Research and development costs are expensed as incurred. Research and development costs consist of salaries and other personnel related expenses, engineering expenses, product development costs and facility costs.

Advertising Costs

Advertising costs are expensed as incurred and are reflected in the line item, sales and marketing, in the consolidated statements of operations and comprehensive loss. Advertising expenses were \$0.2 million and \$0.5 million for the years ended December 31, 2024 and 2023, respectively.

Stock-Based Compensation

The Company issues stock-based compensation awards to employees, directors, and non-employees in the form of stock options and restricted stock units ("RSUs"). The Company measures and recognizes compensation expense for stock-based awards based on the award's fair value on the date of the grant. The Company accounts for forfeitures of stock-based awards when they occur. The fair value of RSUs that vest based on service conditions is measured using the fair value of the Company's common stock on the date of the grant. The fair value of RSUs that vest based on market conditions is measured using a Monte Carlo simulation model on the date of the grant. The fair value of stock options that vest based on service conditions is measured using the Black-Scholes option pricing model on the date of the grant. The Monte Carlo simulation model and the Black-Scholes option pricing model require the input of highly subjective assumptions, including the fair value of the Company's common stock, the expected term of the award, the expected volatility of the Company's common stock, risk-free interest rates, and the expected dividend yield of the Company's common stock. This assumption used to determine the fair value of the awards represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment.

The fair value of awards is recognized on a straight-line basis over the requisite service period. The fair value of the market-based RSUs is recognized over the requisite service period regardless of whether or not the RSUs ultimately vest and convert to common stock.

Income Taxes

The Company accounts for income taxes in accordance with ASC 740, *Income Taxes* ("ASC 740"). ASC 740 prescribes the use of the liability method, whereby deferred tax asset and liability account balances are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates that will be in effect when the differences are expected to reverse.

Deferred income tax balances reflect the effects of temporary differences between the carrying amounts of assets and liabilities and their tax bases and are stated at enacted tax rates expected to be in effect when taxes are actually paid or recovered. Deferred tax assets are evaluated for future realization and reduced by a valuation allowance to the extent the Company believes they will not be realized.

The Company's policy is to recognize interest and penalties related to uncertain tax positions, if any, in the income tax provision.

Net Loss Per Share

Basic net loss per share of common stock is calculated by dividing net loss by the weighted average number of common shares outstanding for the applicable period. Diluted net loss is computed based on the weighted average number of common shares outstanding increased by the number of additional shares that would have been outstanding had the potentially dilutive common shares been issued, including any dilutive effect from outstanding warrants, outstanding stock options, or unvested RSUs, and reduced by the number of shares the Company could have repurchased with the proceeds from the issuance of the potentially dilutive shares. Potentially dilutive instruments are excluded from the per share calculation because the Company is in a net loss position and they would therefore be anti-dilutive.

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Non-controlling interest

In May 2024, the Company's consolidated subsidiary, Cetus Energy, Inc. ("Cetus"), issued a share-based payment award to an employee of Cetus, representing a non-controlling interest. A non-controlling interest in a subsidiary is considered an ownership interest in a majority-owned subsidiary that is not attributable to the parent. The Company includes non-controlling interest as a component of stockholders' equity on the Company's consolidated balance sheets. The Company owns 85% of Cetus.

Recently Adopted Accounting Standards

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") 2023-07, *Segment Reporting (Topic 280) — Improvements to Reportable Segment Disclosures*. The ASU improves reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. The standard is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. We adopted this standard effective for the reporting periods noted above, with retrospective application to all prior periods presented in the financial statements. The adoption of this standard did not have any impact on the Company's financial condition, results of operations and comprehensive loss, or cash flows, but resulted in enhancements to our segment disclosures, primarily related to our significant segment expenses. See Note 17, Segment Reporting, for further information.

Recent Accounting Standards Issued, But Not Yet Adopted

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topics 740): Improvements to Income Tax Disclosures* to expand the disclosure requirements for income taxes. Upon adoption we will be required to disclose additional specified categories in the rate reconciliation in both percentage and dollar amounts. We will also be required to disclose the amount of income taxes paid disaggregated by jurisdiction, among other disclosure requirements. The standard can be applied either prospectively or retrospectively. We will adopt the standard in our 2025 annual period and are currently assessing the effect that the updated standard will have on our financial statement disclosures.

In November 2024, the FASB issued ASU 2024-03, *Income Statement — Reporting Comprehensive Income — Expense Disaggregation Disclosures (Subtopic 220-40) — Disaggregation of Income Statement Expenses*. The ASU requires the disclosure of additional information about specific costs and expense categories in the notes to the consolidated financial statements. The standard is effective for annual periods beginning after December 15, 2026, and interim periods beginning after December 15, 2027, with early adoption permitted. The standard should be applied on a prospective basis with the option to apply the standard retrospectively. We are currently evaluating the impact of this standard on our disclosures.

NOTE 3. REVENUE RECOGNITION

The Company recognized revenue for the product and service categories as follows for the years ended December 31, 2024 and 2023 (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Sale of energy storage products ⁽¹⁾	\$ 44,592	\$ 340,292
Operation and maintenance services	1,090	—
Software licensing	402	—
IP licensing	115	735
Other	—	516
Total revenue	<u>\$ 46,199</u>	<u>\$ 341,543</u>

⁽¹⁾ For the year ended December 31, 2023, \$0.4 million in revenue from the sale of spare energy system parts has been reclassified from "other" to "sale of energy storage products."

For the year ended December 31, 2024, approximately 29% of the Company's revenue was recognized over time and approximately 71% was recognized at a point in time. For the year ended December 31, 2023, 100% of the Company's revenue was recognized over time.

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The following table summarizes the Company's revenue disaggregated by geographic region, which is determined based on the customer's location, for the years ended December 31, 2024 and 2023 (amounts in thousands):

	Year Ended December 31,	
	2024	2023
United States	\$ 44,423	\$ 341,066
Australia	992	—
China	—	477
Other	784	—
Total revenue	<u>\$ 46,199</u>	<u>\$ 341,543</u>

Remaining Performance Obligations

Remaining performance obligations represent the amount of unearned transaction prices under contracts for which work is wholly or partially unperformed. As of December 31, 2024, the amount of the Company's remaining performance obligations was \$42.0 million. The Company generally expects to recognize approximately 90% of the remaining performance obligations as revenue over the next 12 months and the remainder more than 12 months from December 31, 2024.

Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers (amounts in thousands):

	December 31,	
	2024	2023
Refundable contribution	\$ 25,000	\$ 25,000
Unbilled receivables	6,828	55,241
Retainage	—	5,745
Less allowance for credit losses	(25,030)	(1,113)
Contract assets, net of allowance for credit losses	<u>\$ 6,798</u>	<u>\$ 84,873</u>
Contract liabilities, current portion	\$ 8,938	\$ 4,923
Contract liabilities, long-term portion	—	1,500
Total contract liabilities	<u>\$ 8,938</u>	<u>\$ 6,423</u>

Contract assets consist of a refundable contribution, unbilled receivables, and retainage. The refundable contribution was to be refunded upon the customer's first gravity energy storage solution obtaining substantial completion, subject to adjustments for potential liquidated damages if certain performance metrics are not met. During the second quarter of 2024, the Company signed a contract amendment with the customer removing the substantial completion condition for repayment, however as of December 31, 2024, the Company had not received payment under the terms of the amendment. Accordingly, the Company has increased the allowance for credit losses associated with this receivable. The Company is continuing to work with our customer and is actively pursuing collection.

Unbilled receivables represent the estimated value of unbilled work for projects with performance obligations recognized over time. Retainage represents a portion of the contract amount that has been billed, but for which the contract allows the customer to retain a portion of the billed amount until final contract settlement. Retainage is not considered to be a significant financing component because the intent is to protect the customer.

Contract liabilities consist of deferred revenue. Under certain contracts, the Company may be entitled to invoice the customer and receive payments in advance of performing the related contract work. In those instances, the Company recognizes a liability for advance billings in excess of revenue recognized, which is referred to as deferred revenue. Deferred revenue is not considered to be a significant financing component because it is generally used to meet working

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capital demands that can be higher in the early stages of a contract. For the years ended December 31, 2024 and 2023, the Company recognized revenue of \$1.1 million and \$46.0 million, respectively, related to amounts that were included in deferred revenue as of the beginning of their respective years.

NOTE 4. ALLOWANCE FOR CREDIT LOSSES

Activity in the allowance for credit losses was as follows for the years ended December 31, 2024 and 2023 (amounts in thousands):

	Accounts Receivable	Contract Assets	Customer Financing Receivable	Total
Balance at December 31, 2022	\$ —	\$ —	\$ —	\$ —
Addition due to adoption of ASU 2016-13	81	1,063	1,220	2,364
Provision (benefit) for credit losses	(12)	50	112	150
Balance at December 31, 2023	69	1,113	1,332	2,514
Provision for credit losses	1,142	24,173	4,665	29,980
Write-offs	—	(256)	—	(256)
Balance at December 31, 2024	\$ 1,211	\$ 25,030	\$ 5,997	\$ 32,238

NOTE 5. FAIR VALUE MEASUREMENTS

Carrying amounts of certain financial instruments, including cash, accounts payable, and accrued liabilities approximate their fair value due to their relatively short maturities and market interest rates, if applicable.

The Company's financial assets and liabilities that were measured at fair value on a recurring basis were as follows as of December 31, 2024 and 2023 (amounts in thousands):

	December 31, 2024			
	Level 1	Level 2	Level 3	Total
Assets (Liabilities):				
Derivative asset — conversion option ⁽¹⁾	\$ —	\$ —	\$ —	\$ —
Warrant liability ⁽²⁾	—	—	(2)	(2)

	December 31, 2023			
	Level 1	Level 2	Level 3	Total
Assets (Liabilities):				
Derivative asset — conversion option ⁽¹⁾	\$ —	\$ —	\$ 1,025	\$ 1,025
Warrant liability ⁽²⁾	—	—	(2)	(2)

⁽¹⁾ Refer to Note 7 - *Investments* for further information.

⁽²⁾ Refer to Note 14 - *Warrants* for further information.

The Company's financial assets that were measured at fair value on a non-recurring basis were as follows as of December 31, 2024 (amounts in thousands):

	December 31, 2024			
	Level 1	Level 2	Level 3	Total
Assets (Liabilities):				
Investment in equity securities ⁽¹⁾	\$ —	\$ —	\$ 3,270	\$ 3,270

⁽¹⁾ Refer to Note 7 - *Investments* for further information.

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NOTE 6. RELATED PARTY TRANSACTIONS

In May 2019, the Company received a \$1.5 million deposit for a gravity-based system from a customer that was owned by one of its primary stockholders. The deposit and order were received before the owner of the customer became one of the Company's primary shareholders and the deposit was recognized in the line item, contract liabilities, long-term portion, in the consolidated balance sheet as of December 31, 2023. During 2024, the Company concluded it was no longer obligated to provide a gravity-based system to the customer and that the deposit was nonrefundable. As a result, the Company derecognized the \$1.5 million contract liability and recognized it as a gain within the line item, other income (expense), net, in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2024.

During the years ended December 31, 2024 and 2023, the Company paid \$1.1 million and \$1.7 million, respectively, in marketing and sales costs to a company owned by an immediate family member of an officer of the Company. As of December 31, 2024 and 2023, the Company had payables of \$0.1 million and \$0.2 million, respectively, due to this related party.

In May 2023, the Company signed a technology license option agreement with a company affiliated with a member of Energy Vault's Board of Directors ("Board"). The agreement permitted the customer to exercise options to enter into licensing agreements in certain territories to use the Company's gravity storage technology for a fee of \$0.5 million. The customer exercised its option for one territory on June 30, 2023 and paid a licensing fee of \$0.5 million. The customer's option to exercise additional territories expired on June 30, 2024. Immediately prior to the expiration of the option agreement, the Company had \$0.3 million in deferred revenue related to that agreement. The Company agreed to refund the customer \$0.3 million of the option fee upon expiration of the option agreement in exchange for software that supports gravity storage efforts. As of December 31, 2024, the Company did not have any remaining deferred revenue related to the option agreement. The Company terminated the license agreement for the territory that was exercised by the customer effective June 30, 2024, and the Company will not collect any additional licensing fees from this customer.

NOTE 7. INVESTMENTS

The following table provides a reconciliation of investments to the Company's consolidated balance sheets (amounts in thousands):

	December 31, 2024		December 31, 2023	
	Current	Long-Term	Current	Long-Term
Investment in equity securities	\$ —	\$ 3,270	\$ —	\$ 15,000
Convertible note receivable	2,622	—	—	2,295
Note receivable	311	—	—	—
Total investments	<u>\$ 2,933</u>	<u>\$ 3,270</u>	<u>\$ —</u>	<u>\$ 17,295</u>

Investment in Equity Securities

In November 2022, the Company purchased \$9.0 million of equity securities in KORE, a U.S. manufacturer of battery cells and modules. In February 2023, the Company purchased an additional \$6.0 million of equity securities, increasing the Company's total investment in KORE to \$15.0 million.

These equity securities do not have a readily determinable fair value and are recorded at cost, less any impairment, plus or minus adjustments related to observable transactions for the same or similar securities, with unrealized gains and losses included in earnings. For the year ended December 31, 2024, the Company recognized \$11.7 million in impairment charges on its investment in KORE due to a decline in KORE's financial performance. The Company estimated the value of KORE using an approach that utilized Level 3 inputs. The Company estimated the fair value of KORE using publicly traded comparable company values, however the valuation used inputs from KORE that are not publicly available.

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

The significant unobservable inputs used in the valuation of KORE include the following:

Cash-free equity change	(80)%
Revenue multiple	1.3
Volatility	110 %

A reconciliation of the beginning and ending investment in equity securities balance in KORE is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Balance at beginning of period	\$ 15,000	\$ 9,000
Additional investment	—	6,000
Impairment	(11,730)	—
Balance at end of period	\$ 3,270	\$ 15,000

As of December 31, 2023, the carrying value of these equity securities was equal to its cost basis of \$15.0 million.

Convertible Note Receivable

In October 2021, the Company entered into a convertible promissory note purchase agreement with DG Fuels, LLC (“DG Fuels”) and purchased a promissory note with a principal balance of \$1.0 million (“DG Fuels Tranche 1 Note”). In April 2022, the Company purchased an additional promissory note from DG Fuels with a principal balance of \$2.0 million. (“DG Fuels Tranche 2 Note”) (collectively, the “DG Fuels Note”).

The maturity date of the DG Fuels Note is the earlier of (i) 30 days after a demand for payment is made by the Company at any time after the two year anniversary of the date of issuance of the note; (ii) the four year anniversary of the date of issuance of the note; (iii) five days following a Financial Close (“Financial Close” means a project finance style closing by DG Fuels or its subsidiary of debt and equity capital to finance the construction of that certain biofuel facility currently under development by DG Fuels), or (iv) upon an event of default determined at the discretion of the Company. The DG Fuels Note has an annual interest rate of 10.0%. Per the conversion terms, the Company can convert the principal balance and unpaid accrued interest into equity securities of DG Fuels at a 20% discount.

The discounted conversion rate in the DG Fuels Note is considered a redemption feature that is an embedded derivative, which requires bifurcation and separate accounting at its estimated fair value under ASC 815, *Derivative and Hedging*. The embedded derivative upon the purchase of the DG Fuels Tranche 1 Note was an asset of \$0.4 million and the embedded derivative upon the purchase of the DG Fuels Tranche 2 Note was an asset of \$0.7 million. The estimated fair value of the derivative instruments was recognized as a derivative asset on the consolidated balance sheets, with an offsetting discount to the DG Fuels Note. The Company amortizes the discount on the Note into interest income using the effective interest method. The Company recognized interest income of \$0.6 million and \$0.5 million for the years ended December 31, 2024 and 2023, respectively, from the DG Fuels Note. Interest income on the DG Fuels Note includes income from the amortization of the debt discount of \$0.3 million and \$0.2 million for the years ended December 31, 2024 and 2023, respectively.

The derivative financial instrument is recorded in other assets in the consolidated balance sheets. At each reporting period, the Company remeasures this derivative financial instrument to its estimated fair value. The change in the estimated fair value is recorded in other expense, net in the consolidated statements of operations and comprehensive loss.

A reconciliation of the beginning and ending asset balance for the embedded derivative in the DG Fuels Note is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Balance at beginning of period	\$ 1,025	\$ 1,025
Change in fair value	(1,025)	—
Balance at end of period	\$ —	\$ 1,025

ENERGY VAULT HOLDINGS, INC.

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The fair value of the embedded derivative asset was reduced in 2024 due to a decrease in the probability of the Company exercising its conversion option in DG Fuels.

Note Receivable

In October, 2024, the Company loaned AUD 0.5 million (or \$0.3 million) to Stoney Creek to assist the company with purchasing a bond for a BESS project ("Tranche 1"). Tranche 1 has a stated interest rate of 8.0%. Principal and accrued interest are due in October 2025.

On March 7, 2025, the Company agreed to provide Stoney Creek with a bank guarantee of up to AUD 2.5 million (or \$1.6 million) as security for a performance bond ("Tranche 2"). The Company has not issued this bank guarantee as of the filing date of this Annual Report.

Also on March 7, 2025, the Company loaned an additional AUD 0.5 million (or \$0.3 million) to Stoney Creek to fund BESS project costs ("Tranche 3"). Tranche 3 has a stated interest rate of 8.0%. Principal and accrued interest are due in March 2026.

On March 17, 2025, the Company agreed to loan Stoney Creek, pending final governmental approval of the BESS project, up to an additional AUD 7.8 million (or \$4.9 million) to fund development payments due to Stoney Creek's owner and developer, Enervest Utility Pty Ltd ("Enervest") ("Tranche 4"). The Company has loaned AUD 0.4 million (or \$0.2 million) under Tranche 4 as of the filing date of this Annual Report. Principal and interest under Tranche 4 are due in September 2026.

If Stoney Creek's BESS project is cancelled or does not obtain final governmental approval, any outstanding principal and interest owed to Energy Vault would immediately become due. In February 2025, Stoney Creek received preliminary approval by the Australian regulator and Stoney Creek was awarded a long-term service agreement.

Also on March 17 2025, the Company entered into a share purchase agreement to acquire Stoney Creek from Enervest for a nominal purchase price of one hundred Australian dollars. The closing of the acquisition is subject to regulatory review and approval in Australia. Upon closing of the acquisition, the carrying value of the note receivable is expected to be incorporated as part of the total consideration.

NOTE 8. PROPERTY AND EQUIPMENT, NET

As of December 31, 2024 and 2023, property and equipment, net consisted of the following (amounts in thousands):

	Life (years)	December 31,	
		2024	2023
Land		\$ 302	\$ 226
Buildings	27.5	774	774
Machinery and equipment	6	11,584	9,330
Finance lease right-of-use assets	4	185	187
Furniture and IT equipment	3 - 7	1,259	1,474
Leasehold improvements	4 - 7	71	702
Construction in progress		88,669	20,095
Total property and equipment		102,844	32,788
Less: accumulated depreciation		(3,351)	(1,745)
Property and equipment, net		\$ 99,493	\$ 31,043

Machinery and equipment and construction in progress increased as of December 31, 2024 compared to December 31, 2023 primarily due to the construction of the Snyder CDU, the Cross Trails BESS, and a hybrid energy storage system being constructed in Calistoga, California.

In December 2023, the Company paid \$6.3 million to acquire the land that the Snyder CDU is located on, and other related assets. At the time of purchase, the Company intended to resell the land that would not be used for the Snyder CDU and all of the other related assets. As such, the Company recorded \$6.1 million of the purchase price as assets held for sale in the consolidated balance sheet as of December 31, 2023. In the second quarter of 2024, the Company decided it would keep

ENERGY VAULT HOLDINGS, INC.

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the assets that were initially classified as held for sale and instead develop the Cross Trails BESS, a 56.9 MW/113.8 MWh BESS. Due to the change in management's plans, the Company reclassified the assets held for sale to land and construction in progress during the second quarter of 2024.

The following tables shows property and equipment, net by geographical location as of December 31, 2024 and 2023 (amounts in thousands):

	December 31,	
	2024	2023
United States	\$ 98,784	\$ 30,251
Foreign	709	792
Property and equipment, net	<u>\$ 99,493</u>	<u>\$ 31,043</u>

For the years ended December 31, 2024 and 2023, depreciation and amortization related to property and equipment was \$0.7 million and \$0.9 million, respectively.

For the year ended December 31, 2024, the Company recognized a loss on impairment and sale of long-lived assets of \$0.3 million, comprised of \$0.4 million in asset impairments and a \$0.1 million gain on the sale of operating equipment. The impairment relates to the write-off of leasehold improvements in the Company's Westlake Village office due to the Company relocating its corporate office. The Company did not recognize any gains or losses from impairments or sales of equipment during the year ended December 31, 2023.

NOTE 9. INTANGIBLE ASSETS, NET

Intangible assets, net are stated at amortized cost and consist of the following (amounts in thousands):

	December 31, 2024			December 31, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Capitalized software to be sold	\$ 4,901	\$ (363)	\$ 4,538	\$ 1,786	\$ —	\$ 1,786

Once a software application is available for general release and is placed in service, the Company amortizes the capitalized costs on a product basis by the greater of the straight-line method over the estimated economic life of the product, or the ratio that current gross revenues for a product bear to the total current and anticipated future gross revenues for that product. The useful life for our external-use software development costs is five years. Amortization expense for the year ended December 31, 2024 was \$0.4 million. There was no amortization expense for the year ended December 31, 2023.

Future amortization expense for intangible assets is estimated as follows (amounts in thousands):

	Amount
2025	\$ 396
2026	396
2027	396
2028	396
2029	34
Thereafter	—
Subtotal	<u>1,618</u>
Software projects in process	<u>2,920</u>
Total	<u>\$ 4,538</u>

ENERGY VAULT HOLDINGS, INC.

Notes to Consolidated Financial Statements

NOTE 10. DEBT

In July 2023, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company was obligated to repay the lender an aggregate sum of \$1.1 million through nine equal monthly payments, at an annual interest rate of 7.0%. Repayments began on July 15, 2023 and the financing arrangement was fully repaid during the first quarter of 2024.

In September 2023, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company was obligated to repay the lender an aggregate sum of \$0.2 million through four equal monthly payments, at an annual interest rate of 7.0%. Repayments began on September 15, 2023 and the financing arrangement was fully repaid during the first quarter of 2024.

In April 2024, the Company entered into two financing agreements related to premiums under certain insurance policies. For the first financing, the Company is obligated to repay the lender an aggregate sum of \$1.4 million through ten equal monthly payments commencing on April 10, 2024. For the second financing, the Company is obligated to repay the lender an aggregate sum of \$0.4 million through nine equal monthly payments commencing on May 10, 2024. Both financings have an annual interest rate of 7.4%.

In June 2024, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company is obligated to repay the lender an aggregate sum of AUD 0.3 million (or \$0.2 million) through 12 equal monthly payments of AUD 22 thousand (or \$15 thousand), at an annual interest rate of 4.4%, commencing on June 25, 2024.

In July 2024, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company is obligated to repay the lender an aggregate sum of \$1.1 million through nine equal monthly payments, at an annual interest rate of 7.5%, commencing on August 15, 2024.

The carrying value of the Company's debt as of December 31, 2024 and 2023 was \$0.7 million and \$0.4 million, respectively, and is included in the line item, accrued expenses, in the consolidated balance sheets.

Due to the fact that all debt was issued with, and retains maturities of less than 12 months, the carrying value is considered to approximate fair value.

NOTE 11. RETIREMENT PLANS

The Company has a defined benefit pension plan for its employees in its wholly owned Switzerland subsidiary. The plan is a statutory requirement in accordance with local regulations. The Swiss pension plans are governed by the Swiss Federal Law on Occupational Retirements, Survivors' and Disability Pension plans. The Company used third party providers to administer these plans. Benefits provided by the pension plan are based on years of service and employees' remuneration over their employment period. The Company uses December 31 as the year end measurement date for this plan.

The Company's policy is to fund its pension obligations in conformity with the funding requirements under applicable laws and governmental regulations. The pension plans maintain investment policies that, among other things, establish a portfolio asset allocation methodology with percentage allocation bands for individual asset classes. The investment policies provide that investments are reallocated between asset classes as balances exceed or fall below the appropriate allocation bands.

The assumption used for the expected long-term rate of return on plan asset is based on the long-term expected returns for the investment mix of assets currently in the portfolio. Historical return trends for the various asset classes in the class portfolio are combined with current and anticipated future market conditions to estimate the rate of return for each class. These rates are then adjusted for anticipated future inflation to determine estimated nominal rates of return for each class.

The accumulated benefit obligation represents the obligations of a pension plan for past service as of the measurement date, which is the present value of benefits earned to date based on current compensation levels.

ENERGY VAULT HOLDINGS, INC.
Notes to Consolidated Financial Statements

Obligations and Funded Status

The following table presents the defined benefit plans' funded status and amount recognized in the consolidated balance sheets as of December 31, 2024 and 2023 (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Change in Benefit Obligation		
Benefit obligation at beginning of year	\$ 5,791	\$ 4,045
Service cost	300	262
Interest cost	96	75
Actuarial loss	694	313
Transfers in, net of benefits paid	(195)	336
Plan participant's contributions	222	214
Plan amendments	10	60
Foreign currency translation adjustments	(433)	486
Benefit obligation at end of year	\$ 6,485	\$ 5,791
Change in Plan Assets		
Fair value of plans assets at beginning of year	\$ 4,300	\$ 3,155
Actual return on plans' assets	204	8
Employer contributions	222	221
Benefits paid	(195)	336
Plan participant's contributions	222	214
Foreign currency translation adjustments	(312)	366
Fair value of plans assets at end of year	\$ 4,441	\$ 4,300
Funded Status at End of Year		
Fair value of plan assets	\$ 4,441	\$ 4,300
Benefit obligation	(6,485)	(5,791)
Liability recognized at end of year	\$ (2,044)	\$ (1,491)

Components of Net Periodic Benefit Cost

The components of net periodic pension benefit cost for the Company's defined benefit pension plans for the years ended December 31, 2024 and 2023 were as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Employer service costs	\$ 300	\$ 262
Interest cost	96	75
Expected return on plan assets	(220)	(161)
Amortization of net prior service credit	37	29
Amortization of net loss	39	—
Net periodic benefit cost	\$ 252	\$ 205

ENERGY VAULT HOLDINGS, INC.
Notes to Consolidated Financial Statements

Impact on Accumulated Other Comprehensive Loss

Amounts recognized in accumulated other comprehensive loss at December 31, 2024 and 2023 were as follows (amounts in thousands):

	December 31,	
	2024	2023
Net prior service cost	\$ (283)	\$ (305)
Net loss	(1,520)	(859)
Accumulated other comprehensive loss	<u>\$ (1,803)</u>	<u>\$ (1,164)</u>

Changes in accumulated other comprehensive loss for the Company's pension plan were as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Accumulated other comprehensive loss at beginning of year	\$ (1,164)	\$ (645)
Change in net prior service credit (cost)	26	(30)
Change in net loss	(651)	(457)
Foreign currency translation adjustments	(14)	(32)
Accumulated other comprehensive loss at end of year	<u>\$ (1,803)</u>	<u>\$ (1,164)</u>

Assumptions

The assumptions used to measure the benefit obligation and net periodic benefit cost for the Company's defined benefit pension plan were as follows:

	2024	2023
Discount rate	1.1 %	1.8 %
Expected long-term return on plan assets	5.1 %	5.1 %
Rate of compensation increase	1.3 %	1.5 %
Pension increase rate (in payment)	— %	— %

Investment Strategy

As is customary with Swiss pension plans, the plan assets are invested in a Swiss collective fund (Profond Pension Fund, contract number 208.155) with multiple employers. The Company does not have rights to the individual assets of the plans nor does the Company have investment authority over the assets of the plans. The collective fund maintains a variety of investment positions primarily in equity securities and highly rated debt securities. The valuation of the collective fund assets as a whole is a level 3 measurement; however the individual investments of the fund are generally level 1 (equity securities and cash), level 2 (fixed income) and level 3 (real estate and alternative) investments. The Company determines the fair value of the plan assets based on information provided by the collective fund, through review of the collective fund's annual financial statements, and the Company further considers whether there are other indicators that the investment balances reported by the fund could be impaired. The Company concluded that no such impairment indicators were present at December 31, 2024.

ENERGY VAULT HOLDINGS, INC.
Notes to Consolidated Financial Statements

The Swiss pension plans' actual asset allocation as compared to the plan administrators' target asset allocations for fiscal years 2024 and 2023 were as follows:

	2024	2023	Target
Equity instruments (Level 1)	52.4 %	47.6 %	50.0 %
Debt instruments (Level 2)	11.8 %	9.6 %	10.0 %
Real estate (Level 3)	24.4 %	28.3 %	25.0 %
Alternative investments (Level 3)	9.0 %	8.2 %	10.0 %
Cash and equivalents (Level 1)	2.4 %	6.3 %	5.0 %
Total	100.0 %	100.0 %	100.0 %

Cash Flows

Estimated future benefit payments expected to be paid by the defined benefit pension plan at December 31, 2024 are as follows (amounts in thousands):

Year Ending December 31,	Future Benefits
2025	\$ —
2026	49
2027	50
2028	50
2029	51
Thereafter	258
Total	\$ 458

The estimated employer contribution to the defined benefit pension plan in fiscal year 2025 is \$0.2 million.

Defined Contribution Plan

The Company sponsors a defined contribution retirement plan for its United States employees and makes matching contributions up to a maximum of 3.5% of compensation. The Company made \$0.9 million and \$0.8 million in matching contributions for the years ended December 31, 2024 and 2023.

NOTE 12. SUPPLEMENTAL BALANCE SHEETS DETAIL

(amounts in thousands)	December 31,	
	2024	2023
Prepaid expenses and other current assets:		
Prepaid expenses	\$ 3,423	\$ 3,131
Tax refund receivable	117	1,359
Other	55	30
Total	\$ 3,595	\$ 4,520

(amounts in thousands)	December 31,	
	2024	2023
Other assets:		
Interest receivable	\$ 850	\$ 550
Derivative asset — conversion option	—	1,025
Other	306	1,074
Total	\$ 1,156	\$ 2,649

ENERGY VAULT HOLDINGS, INC.
Notes to Consolidated Financial Statements

	December 31,	
	2024	2023
<i>(amounts in thousands)</i>		
Accrued expenses:		
Accrued purchases	\$ 8,165	\$ 71,932
Professional fees	8,373	4,522
Employee costs	4,019	5,985
Taxes payable	2,351	733
Warranty liabilities	1,336	894
Insurance premium financings	724	358
Accrued project loss	—	591
Other	—	27
Total	\$ 24,968	\$ 85,042

	December 31,	
	2024	2023
<i>(amounts in thousands)</i>		
Lease liabilities, current portion:		
Operating leases	\$ 461	\$ 697
Finance leases	38	27
Total	\$ 499	\$ 724

	December 31,	
	2024	2023
<i>(amounts in thousands)</i>		
Other long-term liabilities:		
Operating leases	\$ 785	\$ 1,044
Finance leases	81	93
Warranty liabilities	55	924
Asset retirement obligation	11	52
Warrant liability	2	2
Total	\$ 934	\$ 2,115

NOTE 13. LEASES

The Company primarily has operating leases for its corporate offices, field offices, and vehicles. The Company recognizes a ROU asset and lease liability for operating leases based on the net present value of future minimum lease payments. Lease expense is recognized on a straight-line basis over the non-cancelable lease term and renewal periods that are considered reasonably certain.

The Company primarily has finance leases for vehicles. The Company recognizes a ROU asset and lease liability for finance leases based on the net present value of future minimum lease payments. Lease expense for the Company's finance leases is comprised of the amortization of the right of use asset and interest expense recognized based on the effective interest method.

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The components of lease expense for the years ended December 31, 2024 and 2023 are as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Operating lease expense	\$ 738	\$ 934
Finance lease expense		
Amortization of finance ROU assets	49	52
Interest on finance lease liabilities	13	3
Short-term lease expense	809	481
Variable lease expense	32	56
Capitalized lease costs	(396)	(204)
Sublease income	(27)	(25)
Total	<u>\$ 1,218</u>	<u>\$ 1,297</u>

Supplemental balance sheet information related to leases as of December 31, 2024 and 2023 is as follows:

	December 31,	
	2024	2023
Weighted average remaining lease term (years)		
Operating leases	6.1	5.9
Finance leases	3.0	3.9
Weighted average discount rate		
Operating leases	10.3 %	10.3 %
Finance leases	9.5 %	10.4 %

Supplemental cash flow information related to leases for the fiscal years ended December 31, 2024 and 2023 is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows used for operating leases	\$ 827	\$ 948
Operating cash flows used for finance leases	12	3
Financing cash flows used for finance leases	185	47
	<u>\$ 1,024</u>	<u>\$ 998</u>
ROU Assets obtained in Exchange for Lease Liabilities		
Operating leases	\$ 160	\$ 1,008
Finance leases	60	108
	<u>\$ 220</u>	<u>\$ 1,116</u>

ENERGY VAULT HOLDINGS, INC.

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Future maturities of operating and finance lease liabilities as of December 31, 2024 are as follows (amounts in thousands):

	Operating Leases	Finance Leases
2025	\$ 556	\$ 47
2026	248	46
2027	171	39
2028	110	4
2029	113	—
Thereafter	469	—
Total undiscounted cash flows	1,667	136
Less imputed interest	(421)	(17)
Present value of lease liabilities	\$ 1,246	\$ 119

NOTE 14. WARRANTS

Upon the closing of the Merger, the Company assumed 5.2 million private warrants. Each whole warrant entitles the holder to purchase one share of the Company's common stock at an exercise price of \$11.50 per share, subject to adjustments. The private warrants are exercisable on a cash or cashless basis, at the warrant holders' option, and are not redeemable by the Company, in each case so long as the warrants are still held by Novus or their permitted transferees. The private warrants are exercisable until February 11, 2027. No private warrant activity has occurred since the closing of the Merger, and 5.2 million private warrants remain outstanding as of December 31, 2024.

The private warrants are classified as Level 3 measurements and the Company uses a Black Scholes model to determine their fair value. The primary significant unobservable input used to evaluate the fair value measurement of the Company's private warrants is the expected volatility. A significant increase in the expected volatility in isolation would result in a significantly higher fair value measurement. The private warrants were valued at less than \$0.01 per warrant and warrant liabilities was \$2 thousand as of December 31, 2024 and 2023.

The following table provides the assumptions used to estimate the fair value of the Private Warrants as of December 31, 2024:

Exercise price	11.50
Expected term (in years)	2.12
Expected volatility	17.4 %
Risk-free interest rate	4.1 %
Expected dividend yield	— %

The change in the fair value of the Company's Private Warrants during the years ended December 31, 2024 and 2023 was de minimis.

NOTE 15. STOCK-BASED COMPENSATION

2017 Stock Incentive Plan

In 2017, the Company adopted its 2017 Stock Incentive Plan (the "2017 Plan") which provides for the granting of stock options, restricted stock, and RSUs to employees, directors, and consultants of the Company. Options granted under the 2017 Plan were either ISOs or Nonqualified Stock Options ("NSOs"). Awards under the 2017 Plan may be granted for periods of up to ten years. Under the terms of the 2017 Plan, awards may be granted at an exercise price not less than the estimated fair value of the shares on the date of grant, as determined by the Company's Board. For employees holding more than 10% of the voting rights of all classes of stock, the exercise price of ISOs and NSOs may not be less than 110%

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of the estimated fair value of the shares on the date of grant, as determined by the Board. Awards generally vest over one to four years.

2020 Stock Incentive Plan

In 2020, the Company adopted its 2020 Stock Incentive Plan (the “2020 Plan”) which superseded the previous 2017 Plan. The 2020 Plan provides for the granting of stock options, restricted stock, and RSUs to employees, directors, and consultants of the Company. Options granted under the 2020 Plan may be either ISOs or NSOs. Awards under the 2020 Plan may be granted for periods of up to ten years. Under the terms of the 2020 Plan, awards may be granted at an exercise price not less than the estimated fair value of the shares on the date of grant, as determined by the Company’s Board. For employees holding more than 10% of the voting rights of all classes of stock, the exercise price of ISOs and NSOs may not be less than 110% of the estimated fair value of the shares on the date of grant, as determined by the Board. Awards generally vest over one to four years.

2022 Equity Incentive Plan

In 2022, the Company adopted its 2022 Equity Incentive Plan (the “2022 Incentive Plan”), which superseded the previous 2020 Plan, provides for the granting of stock options, stock appreciation rights (“SARs”), restricted stock, and RSUs to employees, non-employee directors, and consultants of the Company. Shares of common stock underlying awards that expire or are forfeited or canceled will again be available for issuance under the 2022 Incentive Plan.

The number of shares of the Company’s common stock reserved for issuance under the 2022 Incentive Plan is approximately 15.5 million, plus up to approximately 8.3 million shares subject to awards granted under the 2017 and 2020 Plans. Additionally, beginning on March 1, 2022 and ending on (and including) March 31, 2031, the number of shares of the Company’s common stock that may be issued under the 2022 Incentive Plan will increase by a number of shares equal to the lesser of (i) 4.0% of the outstanding shares on the last day of the immediately preceding fiscal year or (ii) such lesser number of shares (including zero) that the Company’s Board determines for the purposes of the annual increase for that fiscal year.

2022 Inducement Plan

In 2022, the Company adopted its 2022 Inducement Plan, which provides for the granting of stock options, SARs, restricted stock, and RSUs to individuals who were not previously employees of Energy Vault, or following a bona fide period of non-employment, as inducement material to such individuals entering into employment with Energy Vault. Shares of common stock underlying awards that expire or are forfeited or canceled will again be available for issuance under the 2022 Inducement Plan. 8.0 million shares of the Company’s common stock are reserved for issuance under the 2022 Inducement Plan.

2025 Inducement Plan

In February 2025, the Board approved the Company’s 2025 Inducement Plan, which provides for the granting of stock options, SARs, restricted stock, and RSUs to individuals who were not previously employees of Energy Vault, or following a bona fide period of non-employment, as inducement material to such individuals entering into employment with Energy Vault. Shares of common stock underlying awards that expire or are forfeited or canceled will again be available for issuance under the 2025 Inducement Plan. 8.0 million shares of the Company’s common stock are reserved for issuance under the 2025 Inducement Plan.

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Stock Option Activity

Stock option activity for the year ended December 31, 2024 and was as follows (amounts in thousands, except per share data):

	Options Outstanding			
	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Balance as of December 31, 2023	5,807	\$ 1.71	6.4	\$ 3,605
Stock options granted	1,050	1.12		
Stock options exercised	(52)	0.80		43
Stock options forfeited, canceled, or expired	(376)	0.80		
Balance as of December 31, 2024	6,429	1.62	6.0	4,248
Options exercisable as of December 31, 2024	2,337	1.54	5.3	1,733
Options vested and expected to vest as of December 31, 2024	6,429	\$ 1.62	6.0	\$ 4,248

The weighted average grant-date fair value of stock options granted during the year ended December 31, 2024 was \$0.90. As of December 31, 2024, total unamortized stock-based compensation expense related to unvested awards that are expected to vest was \$3.7 million. The weighted-average period over which such stock-based compensation expense will be recognized is approximately 1.8 years.

The aggregate intrinsic values of options outstanding, exercisable, vested and expected to vest were calculated as the difference between the exercise price of the options and the closing stock price of the Company's common stock on the NYSE as of December 31, 2024.

The Company uses the Black-Scholes option pricing model to determine the fair value of stock options. The following tables summarizes the assumptions used for estimating the fair value of stock options granted during the years ended December 31, 2024 and 2023.

	Year Ended December 31,	
	2024	2023
Expected term (in years)	6.3	4.5
Expected volatility	95% to 99%	100 %
Risk-free interest rate	3.5% to 4.4%	3.9 %
Expected dividend yield	—	—

Restricted Stock Units

Stock-based compensation expense for awards with only service conditions are recognized on a straight-line basis over the requisite service period of the award. Generally, awards granted under the 2022 Plan and 2022 Inducement Plan vest based solely on a service condition. RSUs granted under the 2020 Plan contain both a service-based vesting condition and liquidity event-based vesting condition. The liquidity event-based vesting condition was satisfied upon the closing of the Merger. The service-based vesting period for these awards is generally three or four years, with a cliff vesting period of one year, and continue to vest monthly or quarterly thereafter.

During 2024 and 2023, the Company granted RSUs to certain employees that vest based on a market-based condition. These RSUs will vest and convert to common stock if the Company's stock price reaches certain price targets for 20 days in any 30 day trading window. The fair value of the RSUs are recognized as expense over the requisite service period regardless of whether or not the RSUs ultimately vest and convert to common stock. The fair value of these market-based RSUs were measured on their respective grant dates, using a Monte Carlo simulation model based on the following range

ENERGY VAULT HOLDINGS, INC.
Notes to Consolidated Financial Statements

and weighted-average assumptions:

	Year Ended December 31,	
	2024	2023
Expected term (in years)	4.0	4.0
Expected volatility	90% - 95%	90 %
Risk-free interest rate	3.4% - 4.5%	3.8%
Expected dividend yield	—	—

RSU activity for the years ended December 31, 2024 and 2023 are as follows (amounts in thousands, except per share data):

	RSUs	Weighted Average Grant Date Fair Value per Share
Nonvested balance as of December 31, 2023	19,029	\$ 4.55
RSUs granted	11,943	1.52
RSUs forfeited	(1,910)	3.41
RSUs vested	(6,737)	5.23
Nonvested balance as of December 31, 2024	22,325	\$ 2.83

As of December 31, 2024, unrecognized stock-based compensation expense related to these RSUs was \$45.0 million which is expected to be recognized over the remaining weighted-average vesting period of approximately 1.6 years.

Stock-Based Compensation Expense

Total stock-based compensation expense for the years ended December 31, 2024 and 2023 is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Sales and marketing	\$ 6,162	\$ 7,143
Research and development	8,693	10,057
General and administrative	23,854	25,897
Total stock-based compensation expense	\$ 38,709	\$ 43,097

NOTE 16. REORGANIZATION EXPENSES

The Company implemented a series of cost savings measures during 2024 and 2023 and recognized reorganization costs of \$1.6 million and \$0.6 million for the years ended December 31, 2024 and 2023, respectively. Reorganization expenses consist of personnel reduction costs related to these cost saving measures. The Company does not expect to incur additional charges related to these cost reduction measures.

Reorganization expenses for the years ended December 31, 2024 and 2023 is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Sales and marketing	\$ 288	\$ 84
Research and development	523	182
General and administrative	748	318
Total reorganization expenses	\$ 1,559	\$ 584

ENERGY VAULT HOLDINGS, INC.
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A reconciliation of the beginning and ending liability balances for reorganization expenses included in the line item, accrued expenses, on the consolidated balance sheets is as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Beginning of period	\$ —	\$ —
Costs charged to expense	1,559	584
Costs paid or settled	(1,577)	(584)
Foreign currency translation adjustments	18	—
End of period	\$ —	\$ —

NOTE 17. SEGMENT REPORTING

As a single reportable segment entity, the Company's CODM uses the profit measure of net loss to allocate resources and assess performance of our business by comparing actual results to historical results and previously forecasted financial information. The measure of segment assets is reported on the consolidated balance sheets as total assets.

See Note 3 for the Company's revenue disaggregated by product line.

The following table presents revenue, significant segment expenses provided to the CODM, and net loss for our consolidated segment (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Revenue	\$ 46,199	\$ 341,543
Cost of revenue	40,012	324,012
Gross profit	6,187	17,531
Significant segment expenses: ⁽¹⁾		
Non-personnel operating costs ⁽²⁾	32,251	38,913
Salaries and wages ⁽³⁾	32,290	41,214
Stock-based compensation	38,709	43,097
Depreciation and amortization	1,058	893
Loss on impairment and sale of long-lived assets	336	—
Other segment items ⁽⁴⁾	37,356	(8,143)
Net loss	\$ (135,813)	\$ (98,443)

⁽¹⁾ The significant segment expense categories and amounts presented align with the segment-level information that is regularly provided to the CODM.

⁽²⁾ Represents sales and marketing, research and development, and general and administrative expenses, excluding personnel related costs.

⁽³⁾ Represents the costs of employees' salaries, benefits, and payroll taxes that are reported within sales and marketing, research and development, and general and administrative expenses in the consolidated statements of operations and comprehensive loss. This amount excludes stock-based compensation expense and personnel costs that were part of a reorganization plan.

⁽⁴⁾ Represents certain other segment items that are not deemed significant segment expenses and primarily consists of provision for credit losses, reorganization expenses, impairment of equity securities, interest income, interest expense, and other income/expense items.

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Notes to Consolidated Financial Statements

NOTE 18. INCOME TAXES

The components of pre-tax loss are as follows for the years ended December 31, 2024 and 2023 (amounts in thousands):

	Year Ended December 31,	
	2024	2023
United States	\$ (123,143)	\$ (82,372)
Switzerland	(8,151)	(13,744)
United Kingdom	(1,993)	(1,478)
Australia	(2,448)	(1,198)
China	(11)	—
Total loss before tax	\$ (135,746)	\$ (98,792)

The following table presents the principal reasons for the difference between the effective tax rate and the federal statutory income tax rate:

	Year Ended December 31,	
	2024	2023
US federal statutory income tax rate	21.0 %	21.0 %
State and local income taxes, net of Federal benefit	0.3 %	0.7 %
Non-deductible expenses	(5.4)%	(9.3)%
Credits	0.6 %	1.3 %
Foreign rate differential	(0.1)%	(0.4)%
Valuation allowance	(16.4)%	(13.4)%
Other	— %	0.5 %
Effective income tax rate	— %	0.4 %

The components of the provision (benefit) for income taxes are as follows (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Current		
Federal	\$ (20)	\$ (367)
State	87	18
Foreign	—	—
Total current tax provision (benefit)	67	(349)
Deferred		
Federal	—	—
State	—	—
Foreign	—	—
Total deferred tax provision	—	—
Total provision (benefit) for income taxes	\$ 67	\$ (349)

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The components of the deferred tax asset are as follows (amounts in thousands):

	December 31,	
	2024	2023
Deferred tax assets:		
Net operating loss carryforwards	\$ 30,397	\$ 27,782
Stock-based compensation	1,763	1,817
Revenue recognition	672	4,434
Accrued expense	605	497
Capitalized research and development	3,701	3,494
Credits	2,778	1,966
Operating lease liabilities	156	223
Impairment	2,556	—
Allowance for credit losses	7,024	—
Other	—	614
Gross deferred tax assets	49,652	40,827
Less: valuation allowance	(48,107)	(39,834)
Net deferred tax assets	1,545	993
Deferred tax liabilities:		
Depreciation and amortization	(1,287)	(775)
Right of use assets	(174)	(218)
Other	(84)	—
Gross deferred tax liabilities	(1,545)	(993)
Net deferred tax assets (liabilities)	\$ —	\$ —

In 2024, the balance of the revenue recognition deferred tax asset was partially reduced due to changes in the tax treatment of IP licensing revenue from prior years. These changes have been accounted for in the current year, resulting in a decrease in the revenue recognition deferred tax asset, offset by adjustments to the net operating loss deferred tax asset and valuation allowance where applicable.

In assessing the realizability of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Based upon the analysis of federal and state deferred tax balances, future tax projections and availability of taxable income in the carryback period, the Company recorded a valuation allowance against the federal, state, and international deferred tax assets of \$48.1 million.

As of December 31, 2024, the Company had federal net operating losses of \$122.8 million, state net operating losses of \$35.8 million, and foreign net operating losses of \$9.8 million. The federal net operating loss carryforwards do not expire, but are subject to a limitation on their use equal to 80% of the taxable income in the year of use. The state net operating loss carryforwards will begin to expire in 2038. \$6.8 million of the foreign net operating loss carryforwards do not expire. The remaining foreign net loss carryforwards begin to expire in 2025.

At December 31, 2024, the Company had federal and state research tax credit carryforwards of \$2.3 million and \$0.6 million, respectively. The federal research tax credit carryforwards will begin to expire in 2042 and the state research tax credits do not expire.

At December 31, 2024 and 2023, the Company recorded \$15.7 million, and \$1.4 million, respectively, of unrecognized tax benefits. During the years ended December 31, 2024 and 2023, the Company recognized no interest and penalties related to uncertain tax positions.

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The following table summarizes the activity related to the Company's unrecognized tax benefits (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Balance at beginning of year	\$ 1,399	\$ 1,066
Increase related to prior year tax positions	13,324	64
Decrease related to prior year tax positions	—	(61)
Increase related to current year tax positions	945	330
Balance at end of year	\$ 15,668	\$ 1,399

During 2024, the Company recorded an uncertain tax position for the historical and current Switzerland net operating loss, related to unrecorded transfer pricing charges between Switzerland and the United States. The total amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate as of December 31, 2024 and 2023 was zero, due to the valuation allowance that would otherwise be recorded on the deferred tax asset associated with the recognized position.

The tax years ended December 31, 2021 through December 31, 2024 remain open to examination by the Internal Revenue Service and California Franchise Tax Board. In addition, the utilization of net operating loss carryforwards are subject to federal and state review for the periods in which those net losses were incurred. The Company is not under audit by any taxing jurisdictions at this time. The foreign entities have statute of limitations ranging between one and five years from the filing date of the tax return.

Utilization of the net operating losses and tax credit carryforwards may be subject to an annual limitation based on changes in ownership, as defined by Section 382 and 383 of the Internal Revenue Code ("IRC") of 1986, as amended. Based on the Company's Section 382 analysis, the Company has determined that none of the net operating losses will be permanently impaired due to 382 limitations.

The IRA was passed in August 2022, providing significant incentives for businesses to become more energy efficient by extending, increasing, or expanding credits applicable to the production of clean energy and fuels, as well as other provisions. These changes did not have a material impact on the tax provision of the Company.

NOTE 19. NET LOSS PER SHARE OF COMMON STOCK

Basic and diluted net loss per share attributable to common stockholders are calculated as follows (amounts in thousands, except per share amounts):

	Year Ended December 31,	
	2024	2023
Net loss attributable to Energy Vault Holdings, Inc.	\$ (135,750)	\$ (98,443)
Weighted-average shares outstanding – basic and diluted	149,846	142,851
Net loss per share – basic and diluted	\$ (0.91)	\$ (0.69)

There were no common share equivalents that were dilutive for the years ended December 31, 2024 and 2023. Due to net losses during those periods, basic and diluted net loss per common share were the same, as the effect of potentially dilutive securities would have been anti-dilutive.

ENERGY VAULT HOLDINGS, INC.
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The following outstanding balances of common share equivalent securities have been excluded from the calculation of diluted weighted-average common shares outstanding because the effect is anti-dilutive for the periods presented (amounts in thousands):

	Year Ended December 31,	
	2024	2023
Private Warrants	5,167	5,167
Stock options	6,429	5,807
RSUs	22,325	19,029
Total	33,921	30,003

9.0 million shares of common stock equivalents subject to the Earn-Out Shares are excluded from the anti-dilutive table above as of December 31, 2024 and 2023, as the underlying shares remain contingently issuable as the Earn-Out Triggering Events have not been satisfied.

NOTE 20. COMMITMENTS AND CONTINGENCIES

Our principal commitments as of December 31, 2024 consisted primarily of obligations under operating leases, finance leases, warranty liabilities, a deferred pension, and issued purchase orders. Our non-cancellable purchase obligations as of December 31, 2024 totaled \$1.9 million.

Loss Contingencies:

In the ordinary course of business, the Company is regularly subject to various legal proceedings. The Company has identified certain legal matters where the Company believes an unfavorable outcome is not probable and, therefore, no reserve has been established. Although the Company currently believes that resolving claims against the Company, including claims where an unfavorable outcome is reasonably possible, will not have a material impact on the Company's business, financial position, results of operations and comprehensive loss, or cash flows, these matters are subject to inherent uncertainties and the Company's view of these matters may change in the future. The Company accrues legal costs as they are incurred.

Warranty Liabilities:

The Company provides a limited warranty to its customers that purchase energy storage products assuring that the products are free from defects. The Company's limited warranties are generally for a period of two or three years after the substantial completion date of a project. These warranties are considered assurance-type warranties which provide a guarantee of quality of the products. For assurance-type warranties in EPC contracts, the Company records an estimate of future warranty costs over the period of construction. For assurance-type warranties in EEQ contracts, the Company records an estimate of future warranty costs upon the transfer of the equipment to the customer. Warranty costs are recorded as a component of cost of revenue in the Company's consolidated statements of operations and comprehensive loss.

As of December 31, 2024 and 2023, the Company accrued the below estimated warranty liabilities, respectively (amounts in thousands):

	December 31,	
	2024	2023
Warranty liabilities, balance at beginning of period	\$ 1,818	\$ —
Accruals for warranties issued	—	1,818
Change in estimates	2,938	—
Costs paid or settled	(3,365)	—
Warranty liabilities, balance at end of period	\$ 1,391	\$ 1,818

The key inputs and assumptions used in calculating estimated warranty liabilities are reviewed by management each reporting period. The Company may make additional adjustments to the estimated warranty liability based on a comparison

ENERGY VAULT HOLDINGS, INC.

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of actual warranty results to expected results for significant differences or based on performance trends or other qualitative factors. If actual failure rates or replacement costs differ from our estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in the estimated warranty liability, which may be material.

Letters of Credit:

In the ordinary course of business and under certain contracts, the Company is required to post letters of credit for its customers, insurance carriers, and surety bond providers for project performance, and for its vendors for payment guarantees. Such letters of credit are generally issued by a bank or a similar financial institution. The letter of credit commits the issuer to pay specified amounts to the holder of the letter of credit under certain conditions. As of December 31, 2024, there was \$16.5 million of letters of credit issued through the Company's credit relationships. The Company is not aware of any material claims relating to its outstanding letters of credit.

Performance and Payment Bonds:

In the ordinary course of business, Energy Vault is required by certain customers to provide performance and payment bonds for contractual commitments related to its projects. These bonds provide a guarantee that the Company will perform under the terms of a contract and that the Company will pay its subcontractors and vendors. If the Company fails to perform under a contract or to pay its subcontractors and vendors, the customer may demand that the surety make payments or provide services under the bond. The Company must reimburse the surety for expenses or outlays it incurs. As of December 31, 2024, there were \$109.0 million of outstanding performance and payment bonds.

Other Bonds:

In the ordinary course of business, Energy Vault is required to obtain other bonds, such as for insurance and government payments. These bonds provide a guarantee that the Company will post the necessary reserves as required by banks and tax or licensing authorities. Additionally, bonds are issued to banks as support for letters of credit provided by those banks. As of December 31, 2024, there were \$23.5 million of outstanding other bonds.

NOTE 21. SUBSEQUENT EVENTS***Tax Credit Transfer Commitment***

On March 28, 2025, the Company entered into a Tax Credit Transfer Commitment, on behalf of its wholly owned subsidiary companies, with a third-party purchaser pursuant to which the Company agreed to sell certain ITCs generated by the Calistoga Resiliency Center hybrid energy storage system, the Cross Trails BESS, and the Snyder CDU that are anticipated to be placed in service in 2025. The Tax Credit Transfer Commitment is subject to certain conditions set forth therein, and requires the Company to incur the remaining associated capital expenditures to complete the projects (via internal sources or external sources such as project financing). The third-party purchaser has agreed to purchase on or before December 15, 2025, all the eligible ITCs generated by the projects, in an amount to be finalized subject to final cost segregation reports. The purchase of the ITCs will be pursuant to a purchase agreement, as may be modified in the course of due diligence with respect to each project. The purchase agreement contains customary representations and warranties, covenants, and closing conditions regarding the existence and availability to transfer the ITCs, including opinions of counsel. Further, the purchase agreement requires the Company to procure tax credit insurance and indemnify the third-party purchaser if the ITCs are reduced, disallowed, or recaptured, among other matters.

Equity Purchase Agreement

On March 31, 2025, the Company entered into an equity purchase agreement (the "Equity Purchase Agreement") with an Equity Investor ("the Equity Investor"). Pursuant to the Equity Purchase Agreement, the Company has the right at its sole discretion, but not the obligation, to sell to the Equity Investor, and the Equity Investor is obligated to purchase, up to \$25.0 million of newly issued shares of the Company's common stock, from time to time during the term of the Equity Purchase Agreement, subject to certain limitations and conditions. As consideration for the Equity Investor's commitment to purchase shares of common stock under the Equity Purchase Agreement, we will pay the Equity Investor \$0.2 million in origination fees. We have the right to terminate the Equity Purchase Agreement on or before May 15, 2025. The Equity Purchase Agreement contains customary representations, warranties and agreements by us, as well as customary indemnification obligations of the Company. The securities in this offering, to the extent offered, will be offered pursuant to our effective S-3/A shelf registration statement (File No. 333-273089), which was filed with the SEC on July 14, 2023.

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and declared effective on July 20, 2023 or, a registration statement that will be filed with the SEC by May 15, 2025. If we don't terminate the Equity Purchase Agreement on or before May 15, 2025, we will issue the Equity Investor shares of our common stock equivalent to 0.3% of our outstanding common stock and then have the right to sell shares to the Equity Investor at a market discount. As of the filing date of this Annual Report, the Company has not sold any shares under this agreement.

Short-Term Loan

On March 31, 2025, the Calistoga Resiliency Center, LLC, a wholly-owned indirect subsidiary of the Company (the "Borrower"), entered into a credit agreement with Jefferies Finance LLC, as administrative agent, collateral agent and lender, in an aggregate principal amount of \$27.8 million ("Short-Term Loan"), which provides short-term financing while the Borrower pursues a long-term debt financing. The Short-Term Loan matures on April 23, 2025 and bears interest at an annual rate of 9.5% until April 4, 2025 and at an annual rate of 15.5% after April 5, 2025. Interest is payable at maturity. The Borrower has the option to prepay the Short-Term Loan at any time. The Short-Term Loan is secured by an escrow account that will hold the loan proceeds, subject to disbursement upon meeting certain conditions subsequent (the "Escrow Release"). Upon the Escrow Release, the Short-Term Loan would be secured by a pledge of substantially all assets of the Borrower, and an equity pledge in the Borrower.

The Short-Term Loan contains affirmative and negative covenants, certain of which become effective upon Escrow Release, including covenants restricting the Borrower's ability to incur certain liens and indebtedness, enter into certain transactions and merge or consolidate with any other entity or the Company ceasing to own the Borrower, which, in each case, will be subject to certain limitations and exceptions. The Short-Term Loan contains mandatory repayments, representations and warranties and events of default customary for a financing of this nature.

Senior Secured Notes

Subsequent to December 31, 2024, the Calistoga Resiliency Center, LLC, entered into a financing arrangement consisting of the issuance of Senior Secured Notes due April 4, 2032 (the "Senior Notes"). The aggregate principal amount of the Senior Notes to be issued is \$27.8 million, with a purchase price of 99.25% of par value. The Senior Notes will be purchased by Eagle Point Credit (the "Investor"), and Jefferies Finance, LLC served as agent for the transaction. The Company expects that the Investor will fund the purchase of the Senior Notes on or about April 4, 2025, by purchasing the Short-Term Loan from Jefferies and converting the Short-Term Loan principal into Senior Notes.

The Senior Notes will bear interest at a rate of 12.5% per annum, until the earlier of (i) the Company's receipt of any tax credit transfer proceeds and (ii) December 31, 2025, and thereafter at a rate of 9.50% per annum. The Senior Notes will be senior secured obligations of Calistoga Resiliency Center, LLC, and will be secured by a first-priority pledge of all assets and equity interests in the Borrower. The Senior Notes contain affirmative and negative covenants, including minimum cash reserves and a minimum debt service coverage ratio.

The Senior Notes will amortize over their term, with scheduled principal and interest payments occurring on February 28 and August 31 of each year. The amortization schedule includes an initial principal payment of \$12.9 million on August 31, 2025, followed by periodic payments as detailed in the financing agreement. A final balloon payment of \$7.0 million is due on April 4, 2032.

The Company may, at its option, redeem the Senior Notes in whole or in part prior to maturity, subject to specified call protection provisions and prepayment premiums as outlined in the agreement. In the event of a change of control, the Company may be required to offer to repurchase the Senior Notes at a specified price.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in our reports filed or submitted under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

As part of the filing of this Form 10-K for the period ended December 31, 2024, our management, with the participation of our CEO and Chief Financial Officer (“CFO”), evaluated the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). As a result of this evaluation, our CEO and CFO concluded that, as of December 31, 2024, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in management’s evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the quarter ended December 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Management’s Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act). Internal control over financial reporting means a process designed by, or under the supervision of, a company’s principal executive and principal financial officers, and effected by the company’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the company are being made only in accordance with authorizations of the company’s management and directors, and (iii) provide reasonable assurance regarding the prevention or timely detection of unauthorized acquisition, use or disposition of the company’s assets that could have a material effect on the company’s financial statements.

Management, with the participation of our CEO and CFO, evaluated the effectiveness of our internal control over financial reporting as of December 31, 2024. This evaluation was conducted using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in the 2013 Internal Control – Integrated Framework. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2024.

This Annual Report on Form 10-K does not include an attestation report of our independent registered accounting firm on management’s assessment regarding internal control over financial reporting due to the exemption from such requirements established by rules of the SEC for emerging growth companies.

ITEM 9B. OTHER INFORMATION

During the three months ended December 31, 2024, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) if Regulation S-K. We are providing the following disclosure in lieu of filing a Current Report on Form 8-K relating to Item 5.02 (“Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers”).

Bill Gross Resignation and Dylan Hixon Appointment to the Company's Board

On March 31, 2025, Bill Gross, who co-founded the Company and has been a director of the Company since 2017, informed the Company of his intent to resign from the Company’s Board effective immediately to pursue other professional interests. There are no disagreements between Mr. Gross and the Company, the Company’s management, or the Board on any matters related to the Company’s operations, policies, or practices. Mr. Gross will continue to support the Company in an advisory role focused on various applications of the gravity technology and energy storage solutions for data center markets.

On March 31, 2025, the Board, upon the recommendation of the Nominating and Corporate Governance Committee, appointed Dylan Hixon as a Class III director to fill the vacancy on the Board resulting from the resignation of Mr. Gross, effective immediately, for a term expiring at the Company’s 2027 annual meeting of stockholders.

As a non-employee director, Mr. Hixon will receive compensation in the same amounts and forms paid to other non-employee members of the Board, as described in the Company’s proxy statement for its 2024 annual meeting of stockholders. In addition, in connection with his election to the Board, Mr. Hixon will receive an equity grant in the form of restricted stock units that have a fair market value of approximately \$200,000 based on the average closing price over the fiscal quarter ending on or prior to March 31, 2025. Mr. Hixon has also entered into the Company’s standard indemnification agreement for directors and officers.

There is no arrangement or understanding pursuant to which the Mr. Hixon was appointed to the Board. There are no family relationships between Mr. Hixon and any director or executive officer of the Company as defined in Item 401(d) of Regulation S-K, and Mr. Hixon has no direct or indirect material interest in any transaction or proposed transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item will be included in the Company’s Proxy Statement to be filed with the SEC within 120 days after December 31, 2024 in connection with the solicitation of proxies for the Company’s 2025 annual meeting of stockholders, and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item will be included in the Company’s Proxy Statement to be filed with the SEC within 120 days after December 31, 2024, and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNER AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Securities Authorized for Issuance Under Equity Compensation Plans

The following table provides information as of December 31, 2024 regarding shares of common stock that may be issued under our equity compensation plans (amounts of securities shown in thousands):

	As of December 31, 2024		
	Number of Securities to be Issued Upon Exercise of Outstanding Options, Restricted Stock Units, and Rights	Weighted-Average Exercise Price of Outstanding Options	Number of Securities Available for Future Issuance Under Equity Compensation Plans (Excludes Securities Included in First Column)
Plan category:			
Equity compensation plans approved by security holders ⁽¹⁾	23,121 ⁽²⁾	\$ 1.72 ⁽³⁾	9,107 ⁽⁴⁾
Equity compensation plans not approved by security holders ⁽⁵⁾	5,632 ⁽⁶⁾	1.12 ⁽³⁾	1,511
Total	28,753	\$ 1.62	10,618

⁽¹⁾ Consists of the 2022 Equity Incentive Plan (the “2022 Plan”).

⁽²⁾ Includes 5.4 million shares of common stock issuable upon the exercise of outstanding options and 17.7 million shares subject to restricted stock units that will entitle the holder to one share of common stock for each unit that vests.

⁽³⁾ Restricted stock units do not have an exercise price and are not included in the weighted average exercise price.

⁽⁴⁾ The number of shares of common stock available for issuance under the 2022 Plan automatically increases each year on March 1, until and including March 31, 2031 by a number of shares equal to the lesser of (i) 4.0% of the aggregate number of shares of common stock outstanding on the last day of the immediately preceding fiscal year or (ii) such lesser number of shares of common stock (including zero) as determined by the Board.

⁽⁵⁾ On November 14, 2022, our Board adopted the 2022 Employment Inducement Plan (the “Inducement Plan”) without stockholder approval pursuant to New York Stock Exchange Rule 303A.02 (“Rule 303A.02”). In accordance with Rule 303A.02, cash and equity-based incentive awards under the Inducement Plan may only be made to a newly hired employee who has not previously been a member of our Board, or an employee who is being rehired following a bona fide period of non-employment by us as a material inducement to the employee’s entering into employment with us. An aggregate of 8.0 million shares of our common stock were initially reserved for issuance under the Inducement Plan.

⁽⁶⁾ Includes 1.1 million shares of common stock issuable upon the exercise of outstanding options and 4.6 million shares subject to restricted stock units that will entitle the holder to one share of common stock for each unit that vests.

The remaining information required by this Item will be included in the Company’s Proxy Statement to be filed with the SEC within 120 days after December 31, 2024, and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item will be included in the Company’s Proxy Statement to be filed with the SEC within 120 days after December 31, 2024, and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item will be included in the Company’s Proxy Statement to be filed with the SEC within 120 days after December 31, 2024, and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) The financial statements filed as part of this Annual Report are listed in Item 8 of this Annual Report.

(a)(2) No financial statement schedules are required to be filed as part of this Annual Report because all such schedules have been omitted. Such omission has been made on the basis that information provided in the financial statements, or in the related notes thereto, in Item 8 of this Annual Report or is not required to be filed as the information is not applicable.

(a)(3) The exhibits listed on the Exhibit Index to this Annual Report are incorporated herein by reference.

Exhibit Index

Exhibit Number	Description of Document	Incorporated by Reference			
		Schedule/Form	File Number	Exhibit Number	Filing Date
3.1	Amended and Restated Bylaws of Energy Vault Holdings, Inc.	8-K	001-39982	3.1	February 14, 2022
3.2	Amended and Restated Certificate of Incorporation of Energy Vault Holdings, Inc.	8-K	001-39982	3.2	February 14, 2022
4.1	Description of Securities	10-K	001-39982	4.1	March 12, 2024
10.1	Amended and Restated Registration Rights Agreement, by and among the Company and certain stockholders and equity-holders of the Company	8-K	001-39982	10.2	February 14, 2022
10.2	Sponsor Restricted Stock Agreement by and among Novus, Novus Initial Stockholders, and Energy Vault	8-K	001-39982	10.5	February 14, 2022
10.3#	Offer Letter, dated November 11, 2022, by and between Energy Vault Holdings, Inc. and Robert Piconi	10-Q	001-39982	10.1	November 14, 2022
10.4#	Offer Letter, dated November 14, 2022, by and between Energy Vault Holdings, Inc. and Jan Kees Van Gaalen	10-Q	001-39982	10.2	November 14, 2022
10.5#	Separation and General Release Agreement by and between Energy Vault Holdings, Inc. and Jan Kees Van Gaalen, dated as of April 5, 2024	8-K/A	001-39982	10.1	April 19, 2024
10.6#	Form of Offer Letter, dated as of April 4, 2024, by and between Michael T. Beer and Energy Vault Holdings, Inc.	8-K	001-39982	10.1	April 4, 2024
10.7#	Employment Agreement by and between Energy Vault, Inc. and Akshay Ladwa, dated as of October 6, 2023	10-Q	001-39982	10.1	May 8, 2024
10.8#**	Employment Agreement by and between Energy Vault, Inc. and Christopher Wiese, dated as of November 10, 2022				
10.9#	Retention Bonus Agreement by and between Energy Vault Holdings, Inc. and Robert Piconi, dated as of April 5, 2024	10-Q	001-39982	10.2	May 8, 2024
10.10#	Retention Bonus Agreement by and between Energy Vault Holdings, Inc. and Akshay Ladwa, dated as of April 5, 2024	10-Q	001-39982	10.3	May 8, 2024
10.11#	Amendment to the Energy Storage System Agreement by and between DG Fuels LLC and Energy Vault Inc., dated as of May 10, 2022	10-Q	001-39982	10.6	May 16, 2022

Exhibit Number	Description of Document	Incorporated by Reference			
		Schedule/Form	File Number	Exhibit Number	Filing Date
10.12#	Energy Vault Holdings, Inc. 2022 Equity Incentive Plan	10-Q	001-39982	10.4	May 16, 2022
10.13#	2022 Employment Inducement Award Plan	10-Q	001-39982	10.5	November 14, 2022
10.14#**	Form of Stock Option Grant Notice and Stock Option Agreement under the 2017 Stock Incentive Plan	10-K	001-39982	10.10	March 12, 2024
10.15#**	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2020 Stock Plan	10-K	001-39982	10.11	March 12, 2024
10.16#	Form of Stock Option Grant Notice and Stock Option Agreement under the 2022 Employment Inducement Award Plan	10-Q	001-39982	10.6	November 14, 2022
10.17#	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2022 Employment Inducement Award Plan	10-Q	001-39982	10.7	November 14, 2022
10.18#	Form of Stock Option Grant Notice and Stock Option Agreement under the 2022 Equity Incentive Plan	10-Q	001-39982	10.8	November 14, 2022
10.19#	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2022 Equity Incentive Plan	10-Q	001-39982	10.9	November 14, 2022
10.20	Non-Employee Director Compensation Policy	10-K	001-39982	10.14	April 13, 2023
10.21	Consulting agreement, dated March 6, 2024, by and between Energy Vault, Inc. and Zia Huque	10-K	001-39982	10.19	March 12, 2024
10.22#	Energy Vault, Inc. 2017 Stock Incentive Plan	S-4	333-260307	10.15	October 18, 2021
10.23#	Energy Vault, Inc. 2020 Stock Plan	S-4	333-260307	10.16	October 18, 2021
10.24**	Credit Agreement, dated March 31, 2025, by and between Calistoga Resiliency Center, LLC and Jefferies Finance LLC				
19.1**	Energy Vault Holdings, Inc. Insider Trading Policy				
21.1**	List of Subsidiaries of Energy Vault Holdings, Inc.				
23.1**	Consent of Independent Registered Public Company Accounting Firm				
31.1**	Certification of Principal Executive Officer required under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				
31.2**	Certification of Chief Financial Officer required under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				
32.1**	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
32.2**	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
97	Policy Relating to Recovery of Erroneously Awarded Compensation	10-K	001-39982	10.10	March 12, 2024

Exhibit Number	Description of Document	Incorporated by Reference			
		Schedule/Form	File Number	Exhibit Number	Filing Date
101.INS**	XBRL Instance Document				
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document				
101.SCH**	XBRL Taxonomy Extension Schema Document				
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB**	XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document				
104**	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)				

Indicates management contract or compensatory plan or arrangement.

** Filed herewith

^ The certifications attached as Exhibit 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filings of Energy Vault Holdings, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

ITEM 16. FORM 10-K SUMMARY

None.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Energy Vault Holdings, Inc.

Date: March 31, 2025

By: /s/ Michael Beer
Name: Michael Beer
Title: Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

Date: March 31, 2025 By: /s/ Robert Piconi
Name: Robert Piconi
Title: Chief Executive Officer (Principal Executive Officer)

Date: March 31, 2025 By: /s/ Michael Beer
Name: Michael Beer
Title: Chief Financial Officer (Principal Financial and Accounting Officer)

Date: March 31, 2025 By: /s/ Larry M. Paulson
Name: Larry M. Paulson
Title: Director

Date: March 31, 2025 By: /s/ Theresa Fariello
Name: Theresa Fariello
Title: Director

Date: March 31, 2025 By: /s/ Thomas Ertel
Name: Thomas Ertel
Title: Director

Date: March 31, 2025 By: /s/ Mary Beth Mandanas
Name: Mary Beth Mandanas
Title: Director

Date: March 31, 2025 By: _____
Name: Stephanie Unwin
Title: Director



EMPLOYMENT AGREEMENT

between

Energy Vault, Inc.

and

Christopher Wiese

This EMPLOYMENT AGREEMENT (this "Agreement"), dated as of November 10, 2022, is made between Energy Vault, Inc. (the "Company") and Christopher Wiese (the "Executive") (collectively referred to herein as the "Parties" or individually referred to as a "Party").

RECITALS

- (A) The Company and Executive are parties to that certain Offer Letter, dated as of February 11, 2021, as amended from time to time (the "Prior Agreement").
- (B) It is the desire of the Company to continue to assure itself of the services of Executive on the terms set forth in this Agreement effective as of November 11, 2022, and Executive wishes to render such services to the Company upon the terms and conditions hereinafter set forth.
- (C) By entering into this Agreement, the Company and Executive acknowledge and agree that the Prior Agreement will automatically terminate and shall have no further force and effect and shall be superseded in its entirety by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements set forth below, the Parties hereto agree as follows:

1. **Position and Duties.** You will continue in your position as **Chief Operating Officer**. You will report to **Robert A. Piconi, Chairman, Co-Founder & Chief Executive Officer**. You shall perform duties consistent with your position in a professional and competent manner, and throughout your employment with the Company devote your time to such matters as the Company may reasonably require. You shall use your best efforts to complete all assignments and adhere to the Company's procedures and policies in effect.
 2. **Compensation.** Your gross annual base salary will be **\$300,000** subject to standard withholdings and authorized deductions, and payable on a bi-weekly basis in accordance with the Company's normal payroll practices. By virtue of your duties, responsibilities, and compensation, your role is an exempt position, meaning you are not eligible for overtime compensation. Your salary is subject to modification during your employment in accordance with the Company's practices, policies, or procedures.
 3. **Annual Performance Bonus.** You will be eligible for an annual discretionary performance bonus each fiscal year based on the Company's achievement of individual and company performance targets set each calendar year. Each year, your target bonus opportunity will be **50%** of your Base Salary. Actual payments will be determined based on the Company's performance, your performance, and at the sole good faith discretion of the Company. You must be employed by the Company at the time of payment to be eligible to earn or receive an Annual Bonus. Annual Bonuses, if any, will be paid within 2½ months after the close
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of the fiscal year to which the Annual Bonus relates. The Annual Bonus is not earned until paid and no pro-rated amount will be paid if your employment with the Company ends due to resignation or termination for Cause (as defined below) prior to the payment date. For purposes of this Agreement "Cause" shall include, but is not limited to: (a) willful failure to substantially perform Executive's duties with the Company (other than any such failure resulting from Executive's physical or mental illness) or failure in any material respect to carry out or comply with any lawful and reasonable directive of the CEO or Board; (b) dishonesty, willful misconduct or fraud in connection with your employment by the Company; (c) commission of a reportable violation of any applicable banking, securities or commodities laws, rules or regulations that constitutes a serious offense that could or does result in a significant fine; (d) conviction or plea of nolo contendere (or equivalent) to or commission of a felony or any crime involving moral turpitude; (e) engaging in sexual, racial, or other forms of unlawful discrimination, harassment, or retaliation; or (f) a material violation of the Company's Code of Conduct.

4. **Remote Work.** If applicable, you will perform your work for the Company remotely – from any location within the United States. By accepting the Company's offer of employment, you agree that you will keep the Company informed of your remote work location and will not relocate to a new remote work location without first informing the Company and obtaining the Company's consent (including by e-mail). Further, you understand and agree that, when directed by the Company, you may be required to attend meetings or work out of the Company's offices in Westlake Village, California or Lugano, Switzerland, in addition to any necessary work-related travel. When working outside of the Company's offices, you agree to remain accessible, to check in with your manager to discuss status and open questions as needed, and to be available to physically attend scheduled work meetings as requested or required by the Company. While working remotely, you agree to maintain a safe, secure, and ergonomic work environment and to report work-related injuries to your manager at the earliest reasonable opportunity. You also agree to protect Company-owned equipment, records, and materials from unauthorized or accidental access, use, modification, destruction, or disclosure. You understand that all equipment, records, and materials provided by the Company shall remain the property of the Company.
 5. **Benefits.** In addition to your compensation, you will be eligible to receive the benefits that are generally offered to all Company employees, subject to any eligibility requirements and terms set forth in any applicable policies or plans (if any), effective the first of the month following your hire date (except as otherwise provided in such policies or plans). Currently, the Company's benefits include medical plans, dental plans, and a vision plan. The Company reserves the right to change or rescind its benefit plans and programs and alter employee contribution levels in its discretion. A full description of these benefits is available upon request.
 6. **Sick Leave.** You will be entitled to sick leave benefits, in accordance with the Company's standard policies and in accordance with applicable federal, state, and/or local law.
 7. **Flexible Time Off.** You will be able to use Flexible Time Off (FTO) with pay during current and subsequent years of employment in accordance with the Company's FTO policy.
 8. **Holidays.** You will be paid for designated holidays in accordance with the Company's holiday schedule, as set forth in the Energy Vault Holdings, Inc. Employee Handbook. This schedule is subject to change at the discretion of the Company.
 9. **Termination.**
 - a. **Definitions:** For purposes of this Agreement:
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- i. "Change in Control" has the meaning set forth in the Company's 2022 Equity Incentive Plan. Notwithstanding the foregoing, a "Change in Control" must also constitute a "change in control event," as defined in Treasury Regulation §1.409A-3(i)(5).
 - ii. "Change in Control Period" means the period commencing on the consummation of a Change in Control and ending 18 months following the consummation of such Change in Control.
 - iii. "Good Reason" means, without your express written consent, the occurrence of any of the following circumstances: (A) a material reduction or material expansion in the nature or scope your duties, responsibilities, authority, powers or functions, or reporting line as compared to your duties, responsibilities, authority, powers or functions, or reporting line before such reduction or expansion, as applicable ; (B) a material reduction in your Base Salary or target Annual Bonus percentage (except for across-the-board reductions based on the Company's financial performance similarly affecting substantially all senior management employees); or (C) you are relocated more than 60 miles from your current work location; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless both (x) you provide written notice to the Company of the condition claimed to constitute Good Reason within 60 days of the initial existence of such condition(s), and (y) the Company fails to remedy such condition(s) within 30 days of receiving such written notice thereof; and provided, further, that in all events the Termination shall not constitute a Termination for Good Reason unless such Termination occurs not more than 90 days following the initial existence of the condition claimed to constitute Good Reason. For the avoidance of doubt, if you retain the same or substantially similar position at the Company after a Change in Control, but the Company becomes a division or subsidiary of the successor, it would result in a material reduction in your role.
 - iv. "Termination" means (a) termination of your employment by the Company with Cause; (b) termination of your employment by the Company without Cause; (c) termination of your employment by you for Good Reason (as defined below); or (d) termination of your employment by you without Good Reason or due to your death or disability.
- b. Upon your Termination for any reason, you will be entitled to receive the sum of: (i) the portion of your Base Salary earned through the date of Termination, but not yet paid to you; (ii) any expenses owed to you; and (iii) any amount accrued and arising from your participation in, or benefits accrued under any employee benefit plans, programs or arrangements, which amounts shall be payable in accordance with the terms and conditions of such employee benefit plans, programs or arrangements (collectively, the "Company Arrangements"). Except as otherwise expressly required by law or as specifically provided in a Company Arrangement or herein, all of your rights to salary, severance, benefits, bonuses and other compensatory amounts hereunder (if any) shall cease upon your Termination.
- c. If your Termination is by the Company without Cause or by you for Good Reason, then, subject to your delivery to the Company of an executed waiver and release of claims in a form approved by the Company (the "Release") that becomes effective and irrevocable in accordance with Section 15(c) below, and your continued compliance with any applicable restrictive covenants, you will receive, in addition to payments and benefits set forth in Section 11(b) above, the following:
- i. A lump sum cash payment equal to one year of your Base Salary payable on the first regular payroll date following 60 days after the date of Termination. If the triggering
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termination is within the Change in Control Period, the lump sum cash payment will be equal to the product of (A) 1.5 and (B) the sum of your Base Salary and your target Annual Bonus.

- ii. A pro rata portion of your target Annual Bonus for the fiscal year in which the date of Termination occurs under the Company's annual incentive compensation plan, calculated by multiplying (A) your target Annual Bonus by (B) a fraction, (1) the numerator of which is the number of days in the fiscal year in which the date of Termination occurs through and including the date of Termination, and (2) the denominator of which is three hundred sixty-five (365), payable on the first regular payroll date following 60 days after the date of Termination;
 - iii. If the triggering termination is within the Change in Control Period (to the extent permitted by Section 409A (as defined below)), all of the then-unvested shares subject to each of your then-outstanding equity awards, which were granted pursuant to the Company's 2017 Stock Incentive Plan, 2020 Stock Plan, 2022 Equity Incentive Plan, or other comparable Company equity plan, will immediately vest and except as otherwise required by Section 409A, any restricted stock units or similar full value awards will be settled on the 60th day following your Termination; and
 - iv. during the period commencing on the date of Termination and ending 18 months thereafter or, if earlier, the date on which you become eligible for comparable replacement coverage under a subsequent employer's group health plan (in any case, the "COBRA Period"), subject to your valid election to continue healthcare coverage under Section 4980B of the Code (as defined below) and the regulations thereunder, the Company shall, in its sole discretion, either (A) continue to provide to you and your dependents, at the Company's sole expense, or (B) reimburse you and your dependents for coverage under its group health plan (if any), at the same levels and costs in effect on the date of Termination (excluding, for purposes of calculating cost, an employee's ability to pay premiums with pre-tax dollars); *provided, however*, that if (1) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the continuation coverage period to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A-1(a)(5), (2) the Company is otherwise unable to continue to cover you or your dependents under its group health plans or (3) the Company cannot provide the benefit without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then, in any such case, an amount equal to each remaining Company subsidy shall thereafter be paid to you in substantially equal monthly installments over the COBRA Period (or remaining portion thereof).
10. **Employee Confidentiality, Non-Disclosure, and Inventions Assignment Agreement.** In connection with your employment with the Company, you will receive and have access to Company confidential information and trade secrets. Accordingly, enclosed with this Agreement as **Attachment 1** (and incorporated herein by reference) is an Employee Confidentiality, Non-Disclosure, and Inventions Assignment Agreement ("CNIAA"), which contains restrictive covenants and prohibits unauthorized use or disclosure of the Company's confidential information and trade secrets, among other obligations. Please review the CNIAA and only sign it after careful consideration of its terms. Your offer of employment is contingent on your execution of the enclosed CNIAA, which is incorporated herein by reference.
11. **Prior Agreements.** You represent that you have disclosed to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the
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manner in which you may be employed. It is the Company's understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case.

12. **At-Will Employment.** Your employment with the Company is "at-will." This means that, just as you may resign from the Company at any time for any lawful reason or no reason, the Company may terminate your employment at any time, with or without Cause, and with or without notice. Notwithstanding that your employment is at-will, the Company requests and appreciates that if you decide to leave the Company, you provide as much advance notice as reasonably practicable.

13. **Tax Matters.**

- a. **Withholding.** All forms of compensation referred to in this Agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law. Regardless of the amount withheld or reported, you are solely responsible for all taxes on compensation under this agreement (including imputed compensation) except the employer's share of employment taxes.
- b. **Tax Advice.** You are encouraged to obtain your own tax advice regarding your compensation from the Company. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company or its Board of Directors related to tax liabilities arising from your compensation.
- c. **Section 409A of the Internal Revenue Code.** All payments and other compensation described in this Agreement are intended to comply with or be exempt from the requirements of Internal Revenue Code of 1986, as amended (the "Code") Section 409A and the regulations and guidance promulgated thereunder (collectively "Section 409A"). This Agreement shall be interpreted consistently with that intent, provided that nothing in this agreement shall be construed as a warranty of tax treatment or otherwise to transfer liability for any tax under Section 409A from you to the Company or any of its affiliates. In no event whatsoever shall the Company or any of its current or future affiliates or their respective advisors, agents, attorneys, representations or successors be liable for any additional tax, interest or penalties that may be imposed on you by Section 409A or any damages for failing to comply with Section 409A. Each installment in a series of payments shall be treated as a separate payment. Notwithstanding anything in this Agreement to the contrary, any compensation or benefits payable under this Agreement that is considered nonqualified deferred compensation under Section 409A and is designated under this Agreement as payable upon your Termination shall be payable only upon your "separation from service" with the Company within the meaning of Section 409A. Notwithstanding anything in this Agreement to the contrary, if you are deemed by the Company at the time of your Termination to be a "specified employee" for purposes of Section 409A, to the extent delayed commencement of any portion of the benefits to which you are entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A, such portion of your benefits shall not be provided to you prior to the earlier of (1) the expiration of the six-month period measured from the date of your Termination with the Company or (2) the date of your death. Upon the first business day following the expiration of the applicable Section 409A period, all payments deferred pursuant to the preceding sentence shall be paid in a lump sum to you (or your estate or beneficiaries), and any remaining payments due to you under this Agreement shall be paid as otherwise provided herein.
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Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of your Termination are subject to your execution and delivery of a Release, (A) the Company will deliver the Release to you within seven business days following your date of Termination, and the Company's failure to deliver a Release prior to the expiration of such seven business day period shall constitute a waiver of any requirement to execute a Release, (B) if you fail to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revoke your acceptance of the Release thereafter, you will not be entitled to any payments or benefits otherwise conditioned on the Release, and (C) in any case where your date of Termination and the Release Expiration Date fall in two separate taxable years, any payments required to be made to you that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A will be made on the first payroll period to occur in the subsequent taxable year. For purposes hereof, "Release Expiration Date" shall mean (1) if you are under 40 years old as of the date of Termination, the date that is seven days following the date upon which the Company timely delivers the Release to you, and (2) if you are 40 years or older as of the date of Termination, the date that is 21 days following the date upon which the Company timely delivers the Release to you, or, in the event that your termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is 45 days following such delivery date.

- d. **Section 280G of the Internal Revenue Code.** Notwithstanding any other provisions of this Agreement or any other company arrangement, in the event that any payment or benefit by the Company or otherwise to or for your benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (all such payments and benefits, being hereinafter referred to as the "Total Payments"), would be subject (in whole or in part) to the excise tax imposed by Code Section 4999 (the "Excise Tax"), then the Total Payments shall be reduced (in the order provided below) to the minimum extent necessary to avoid the imposition of the Excise Tax on the Total Payments, but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income and employment taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments), is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income and employment taxes on such Total Payments and the amount of the Excise Tax to which you would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

The Total Payments shall be reduced in the following order: (i) reduction on a pro-rata basis of any cash severance payments that are exempt from Section 409A, (ii) reduction on a pro-rata basis of any non-cash severance payments or benefits that are exempt from Section 409A, (iii) reduction on a pro-rata basis of any other payments or benefits that are exempt from Section 409A, and (iv) reduction of any payments or benefits otherwise payable to you on a pro-rata basis or such other manner that complies with Section 409A; *provided*, in case of subclauses (ii), (iii) and (iv), that reduction of any payments attributable to the acceleration of vesting of Company equity awards shall be first applied to Company equity awards that would otherwise vest last in time.

The Company will select an adviser with experience in performing calculations regarding the applicability of Code Section 280G and the Excise Tax, *provided* that the adviser's determination shall be made based upon "substantial authority" within the meaning of Code Section 6662, (the

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"Independent Advisors") to make determinations regarding the application of this Section 15(d). The Independent Adviser shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date on which your right to the Total Payments is triggered, if applicable, or such other time as requested by you (*provided*, that you reasonably believe that any of the Total Payments may be subject to the Excise Tax) or the Company. The costs of obtaining such determination and all related fees and expenses (including related fees and expenses incurred in any later audit) shall be borne by the Company. Any good faith determinations of the Independent Adviser made hereunder shall be final, binding and conclusive upon the Company and you.

In the event it is later determined that to implement the objective and intent of this Section 15(d), (i) a greater reduction in the Total Payments should have been made, the excess amount shall be returned promptly by you to the Company or (ii) a lesser reduction in the Total Payments should have been made, the excess amount shall be paid or provided promptly by the Company to you, except to the extent the Company reasonably determines would result in imposition of an excise tax under Section 409A.

14. Mutual Arbitration Agreement. To the maximum extent permitted by law, you and the Company agree that all claims, disputes and controversies of any kind arising out of, relating to or in any way associated with this Agreement and/or your employment by the Company or the termination of that employment, including but not limited to all common, constitutional, contract and tort law theories and statutory claims under federal, state and/or local law, shall be submitted to and resolved through final and binding arbitration, before a single arbitrator licensed to practice law and experienced in employment law, and administered by JAMS (<http://www.jamsadr.com/>) pursuant to its Employment Arbitration Rules & Procedures (the "JAMS Rules") (available at <https://www.jamsadr.com/rules-employment-arbitration/>) in effect at the inception of the arbitration, incorporated herein by reference, except as modified or supplemented herein. The arbitration shall take place at JAMS's office in (or nearest to) your (last) primary work location for the Company, unless the parties agree to a different location or as otherwise required by law. This agreement to arbitrate applies to all claims that the Company may have against you, as well as all claims that you may have against the Company, including any of the Company's affiliates, parents, subsidiaries, successors, assigns, owners, directors, officers, shareholders, employees, managers, members, and agents.

Claims not subject to this agreement to arbitrate are expressly limited to: (i) claims for workers' compensation, disability benefits or unemployment compensation benefits; (ii) claims based on any pension or welfare plan or collective bargaining agreement, the terms of which may contain arbitration or other non-judicial dispute resolution procedure; (iii) any unfair labor practice charge which is to be brought under the National Labor Relations Act; (iv) sexual assault or sexual harassment disputes arising under federal, tribal, or state law which you elect not to pursue in arbitration; and/or (v) claims which may not be arbitrated as a matter of law. Nothing in this agreement to arbitrate precludes you from filing an administrative charge/complaint of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar federal, state, or local government agency for purposes of exhausting your administrative remedies, to the extent required by law; however, any claims, action or lawsuit seeking damages, injunctive relief or other monetary or non-monetary relief by you based on such administrative charges/complaints must be brought in arbitration, in accordance with this agreement to arbitrate, except as to sexual assault or sexual harassment disputes which you elect to pursue in court. You acknowledge that, should the EEOC, DFEH or any local government agency pursue claims on your behalf, you have waived your right to recover any money from the Company, other than amounts recoverable through arbitration pursuant to this agreement to arbitrate, if any.

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Notwithstanding anything to the contrary in JAMS's rules, the arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (c) be authorized to award any or all remedies that you or the Company would be entitled to seek in a court of law. However, the arbitrator shall have no authority or power to award any remedy in excess of what a party would be able to obtain in a court of law. The arbitrator may hear and determine any dispositive issue of law asserted by you or the Company to the same extent a court could hear and determine a dispositive motion. In ruling on such motions and the admissibility of evidence, the arbitrator shall apply the standards under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and case law thereunder. The decision of the arbitrator will be final, conclusive, and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

Nothing herein shall be construed to preclude a party's application for temporary or preliminary injunctive relief to a court of relevant jurisdiction, in furtherance of arbitration.

Except as to sexual assault or sexual harassment disputes, the arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this Agreement (including this agreement to arbitrate therein). Any party's right to appeal or to seek modification of rulings by the arbitrator is strictly limited by the Federal Arbitration Act ("FAA"). The parties agree that the Company is engaged in interstate commerce and that, except as provided in this Agreement, the FAA shall govern the interpretation and enforcement of, and all proceedings pursuant to, this agreement to arbitrate. Except as otherwise provided under the FAA or other applicable federal law, this Agreement shall be governed by the laws of the state where you are/were last employed by the Company, without reference to any state's or country's choice of law provisions to the contrary.

Except as otherwise prohibited by law, neither you, the Company, nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties to the arbitration, except to your respective attorneys and tax advisors without any written consent of the other, provided such persons/entities first agree to be bound by this confidentiality provision. Either party may disclose the existence and results of any arbitration in a proceeding to enforce or appeal an arbitral award, as provided under applicable law.

The fees of the arbitrator and all other costs that are unique to the arbitration process shall be paid by the Company if and to the extent required by law. Otherwise, each party shall be solely responsible for paying his/her/their/its own costs for the arbitration, including but not limited to attorneys' fees. However, if either party prevails on a claim which affords the prevailing party attorneys' fees pursuant to law, statute, or contract, the arbitrator may award reasonable attorneys' fees to the prevailing party.

You understand and agree that claims must be brought by either you or the Company in your individual capacity, not as plaintiffs or class members in any purported class or collective proceeding, and the arbitrator shall not have the power to hear the arbitration as a class or collective action or otherwise combine claims by multiple parties in a single arbitration ("Class/Collective Action Waiver"). If this Class/Collective Action Waiver is found to be unenforceable, in whole or in part, any offending provisions shall be severed from this Agreement.

To the greatest extent permitted by law, claims must be brought by either you or the Company in your individual capacity, not as representatives in any representative proceeding, and the arbitrator shall not have the power to hear any claims on a representative basis ("Representative Action Waiver"). If this Representative Action Waiver is found to be unenforceable, it shall be severed from this Agreement.

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You and the Company agree and acknowledge that this agreement to arbitrate is supported by good and valuable consideration, including, without limitation, the parties' mutual agreement to arbitrate and your at-will employment with the Company.

BY AGREEING TO SUBMIT THE CLAIMS TO ARBITRATION, YOU AND COMPANY ARE HEREBY WAIVING THE RIGHT TO A TRIAL IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL.

15. **Reservation of Rights.** Nothing in this Agreement or the CNIAA shall prohibit you from: (a) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful or (b) speaking with or providing information to law enforcement, the U.S. Securities and Exchange Commission, the United States Equal Employment Opportunity Commission, and/or any other similar state or local fair employment practices agencies.
16. **Indemnification.** Contemporaneous with the parties' execution of this Agreement, you and the Company will also execute the Company's standard Indemnification Agreement applicable to officers.
17. **Complete Agreement.** This Agreement, the CNIAA, and the attachments referenced herein, supersede and replace any prior agreements, representations or understandings (whether written, oral, implied or otherwise) between you and the Company including, but not limited to, any representations made during your interviews, and constitute the complete agreement between you and the Company regarding the subject matters set forth herein. This letter, including, but not limited to, its at-will employment provision, may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company.
18. **Severability.** The invalidity, illegality, or unenforceability of any provision, subsections, or sentences contained in of this Agreement, or any terms hereof, shall not affect the legality, validity or enforceability of any other provision or term of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

For purposes of federal immigration law, you will be required to provide the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your first day of employment with the Company, or our employment relationship with you may be terminated. You should be aware that the Company participates in E-Verify, a federal government system used to verify the employment authorization and social security number of each new employee.

By signing this Agreement, you acknowledge that the terms described in this Agreement, together with the CNIAA and other attachments, set forth the entire understanding between you and the Company and supersedes any prior representations or agreements, whether written or oral; there are no terms, conditions, representations, warranties or covenants other than those contained herein. No term or provision of this letter may be amended waived, released, discharged or modified except in writing, signed by you and an authorized officer of the Company except that the Company may, in its sole discretion, adjust salaries, incentive compensation, benefits, job titles, locations, duties, responsibilities, and reporting relationships.

We hope that you will accept our offer of employment set forth in this Agreement. After you have had an opportunity to review this Agreement, kindly sign your name and the date at the end of this Agreement to signify your understanding and acceptance of these terms.

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To accept this offer, sign and return this Agreement within three (3) business days from the date of this letter. This Agreement may be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com) – DocuSign is preferred. If we do not receive a signed copy of this Agreement, the offer reflected in this letter may be withdrawn.

Should you have any questions regarding this letter or the terms of your at-will employment with the Company, please feel free to contact me.

Sincerely,

/s/ Gonca Icoren

Name: Gonca Icoren

Title: Chief People Officer

Attachments

1. Employee Confidentiality, Non-Disclosure, and Inventions Assignment Agreement (with exhibits)

I have read and accept this employment offer.

/s/ Christopher Wiese

SIGNATURE OF **Name: Christopher Wiese**
Title: Chief Operating Officer

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ATTACHMENT 1

ENERGY VAULT HOLDINGS, INC.

EMPLOYEE CONFIDENTIALITY, NON-DISCLOSURE, AND INVENTIONS ASSIGNMENT AGREEMENT

This Employee Confidential, Non-Disclosure, and Inventions Assignment Agreement ("Agreement") is entered into as of the date of its execution (the "Effective Date") by and between Energy Vault Holdings, Inc. (the "Company"), and Christopher Wiese ("Employee").

In consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed by and between the parties as follows:

1. Confidential Information Protections.

a. **Company Information; Nondisclosure.** Employee shall at all times during the term of Employee's employment with the Company and thereafter, hold in strictest confidence, and not use, disclose to any person, firm or corporation without written authorization of the Board, lecture upon, or publish any Confidential Information (as defined herein) of the Company and its employees, except: (i) except as necessary in carrying out Employee's work for the Company; (ii) to the extent a member of the Board of the Company expressly authorizes such disclosure in writing; or (iii) as required by law, legal process, or as otherwise expressly permitted herein. Employee will take all reasonable precautions to prevent the inadvertent accidental disclosure of "Confidential Information." As used herein, "Confidential Information" means any proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, investors, business partners, customer lists and customers (including, but not limited to, those of the Company on whom Employee has called or with whom Employee became acquainted during the term of Employee's employment), markets, software, developments, inventions, ideas, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to Employee by the Company or any of its employees, either directly or indirectly in writing, orally or by drawings or observation of parts or equipment. "Confidential Information" does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of Employee or of others who were under confidentiality obligations as to the item or items involved, or if Employee can prove such information was already in Employee's possession prior to Employee's employment with the Company. Further, pursuant to 18 U.S.C. § 1833(b), Employee shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, Employee is hereby advised that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

b. **Former Employer Information.** Employee shall not, during Employee's employment with the Company, improperly use or disclose any confidential or proprietary information or trade secrets, if any, of any former or concurrent employer or other person or entity to whom or to which Employee has an obligation of confidentiality, and Employee shall not bring onto the premises of the Company any unpublished document, property, or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

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c. **Third Party Information.** Employee shall hold all confidential or proprietary information that the Company has received from any third party to which it is the Company's obligation to maintain the confidentiality of such information ("Third Party Information") and to use it only for certain limited purposes in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out Employee's work for the Company consistent with the Company's agreement with such third party. During Employee's employment and thereafter, Employee will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with Employee's work for the Company, Third Party Information unless expressly authorized by the Chief Executive Officer of the Company in writing.

2. **Inventions.** Employee hereby represents, warrants and covenants with respect to Prior Inventions or Inventions (each, as defined below), as the case may be, as follows:

a. **Inventions Retained and Licensed.** Attached hereto, as Exhibit A, is a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by Employee prior to Employee's employment with the Company (collectively referred to as "Prior Inventions"), which belong to Employee, which relate to the Company's proposed business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, Employee hereby represents that there are no such Prior Inventions. If in the course of Employee's employment with the Company, Employee uses or incorporates into a product, process, service, or machine of Company or any of its wholly owned subsidiaries, a Prior Invention owned by Employee or in which the Employee has an interest, or if Employee's rights in any Prior Inventions may block or interfere with, or may otherwise be required for, the Company is hereby granted and shall have a nonexclusive, fully paid and royalty-free, irrevocable, perpetual, transferable, worldwide license, with rights to sublicense through multiple levels of sublicensees, to make, reproduce, make derivative works of, distribute, use, sell, import, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or machine, to the fullest extent permitted by law. Employee represents and agrees that in the event of any dispute regarding the creation or ownership of any invention, any such disputed invention that may relate to the Company's business or actual or demonstrably anticipated research or development will be presumed to have been created after the commencement of Employee's employment with the Company unless Employee is able to conclusively demonstrate, beyond any question of doubt, that the invention in question was made by Employee or acquired by Employee prior to the commencement of Employee's employment with, and therefore is not to be assigned to, the Company. To the extent that any third parties have rights in any such Prior Inventions, Employee hereby represents and warrants that such third party or parties have validly and irrevocably granted to Employee the right to grant the license stated above.

b. **Ownership.** Employee agrees that, throughout Employee's employment with the Company, all inventions, discoveries and improvements, whether patentable or unpatentable, and all works of authorship, whether copyrightable or uncopyrightable, made, developed, conceived, modified, acquired, devised, discovered or created by Employee, whether solely or jointly with others, whether by using the Company's equipment, supplies, facilities, trade secrets, Confidential Information or otherwise, and which relate to or pertain in any way at the time of conception or reduction to practice of the invention or of creation of the work of authorship to the business of the Company, or the actual or demonstrably anticipated research or development of the Company, or which result from any work performed by Employee for the Company (hereinafter "Work Product"), shall be promptly disclosed in writing by Employee to the Company, and whether disclosed or not, shall be the exclusive property of the Company or its assignee(s).

c. **Works for Hire.** Employee acknowledges that all Work Product shall be deemed and considered "works made for hire" under the copyright laws of the United States (including 17 U.S.C. § 101) ("Work for Hire"); and moreover, that all right, title and interest therein, including all rights of copyright, patent or otherwise, in the United States and in all foreign countries, in any form or medium and in all fields of use now known or hereafter

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existing, shall belong exclusively to the Company. Employee acknowledges that the Company is under no obligation to Employee, monetary or otherwise, in connection with such Work for Hire.

d. **Assignment.** To the extent an assignment is necessary to perfect the Company's ownership of any Work Product or Work for Hire described above in this Section 2, Employee hereby irrevocably assigns to the Company or its assignee, all of Employee's right, title and interest therein, and agrees that neither the Company, nor its divisions or affiliates, are under further obligation, monetary or otherwise, to Employee for such assignment. Employee agrees to assist the Company in every proper way to obtain, and from time to time enforce, United States and foreign intellectual property rights and moral rights relating to Work Product or Works for Hire in any and all countries. Employee agrees to execute, acknowledge and deliver to the Company, its successors and assigns, all documentation, including, but not limited to, applications for patents and/or copyrights, as the Company may deem necessary or desirable to obtain and perfect the interests of the Company, its successors and assigns, in any and all countries, in such Work Product and/or Works for Hire, and to vest title thereto in the Company. Employee understands and agrees that Employee's obligation to assist the Company with respect to intellectual property rights relating to such Work Product and/or Works for Hire in any and all countries will continue beyond the termination of Employee's employment. In the event the Company is unable for any reason, after reasonable effort, to secure Employee's signature on any document needed in connection with the actions specified in this Section, Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Employee's agent and attorney in fact, which appointment is coupled with an interest, to act for and on Employee's behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by Employee. Employee hereby waives and quitclaims to the Company any and all claims, of any nature whatsoever, which Employee now or may hereafter have for infringement of any intellectual property rights assigned under this Agreement to the Company. Employee acknowledges that the Company is under no further obligation, monetary or otherwise, to Employee in connection with any such assignment.

e. **Excluded Inventions.** For employees who work for the Company in Delaware, Illinois, Kansas, Minnesota, Nevada, North Carolina, Utah, and/or Washington, the assignment set forth in this Section 2 shall not apply to any invention that is covered by the provisions of any applicable specific inventions statute ("Specific Inventions Law") set forth in the Inventions Assignment Notice attached hereto as **Exhibit B.**

f. **Inventions Assigned to the United States.** Employee shall assign to the United States government all Employee's right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

g. **Maintenance of Records.** Employee shall keep and maintain adequate and current written records of all Confidential Information developed by the Employee and all Inventions made solely or jointly with others during the term of Employee's employment with the Company. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

h. **Obligation to Keep the Company Informed.** Any Employee who works for the Company in Delaware, Illinois, Kansas, Minnesota, Nevada, North Carolina, Utah, and/or Washington agrees to advise the Company promptly in writing of any inventions that Employee believes meet the criteria in any Specific Inventions Law set forth in Exhibit B that Employee has not otherwise already disclosed on **Exhibit A**, during the period of Employee's employment with the Company and for one (1) year after the termination of employment. In addition, Employee will promptly disclose to the Company all patent applications filed by Employee or on Employee's behalf within one (1) year after the termination of employment. The Company will keep in confidence and will not use for any purpose or disclose to third parties without Employee's consent any confidential information disclosed in writing to the Company pursuant to this Agreement relating to inventions that qualify fully for protection under any

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applicable Specific Inventions Law (if any). Employee will preserve the confidentiality of any invention that does not fully qualify for protection under a Specific Inventions Law.

3. **Duty of Loyalty During Employment.** To the fullest extent permitted by law, Employee agrees that during the period of employment by the Company, Employee will not, without the Company's express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, Employee's employment by the Company.

4. **No Conflicting Employment, Agreement, or Obligation.** Employee represents that Employee's performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by Employee in confidence or in trust prior to employment by the Company. Employee has not entered into, and Employee agrees not to enter into, any agreement either written or oral in conflict with this Agreement. Employee shall perform Employee's duties faithfully and to the best of Employee's ability and shall devote Employee's full business time and effort to the performance of Employee's duties hereunder. Employee shall not, during the term of Employee's employment with the Company, engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company, or its subsidiaries are now involved or become involved during the term of Employee's employment, nor will Employee engage in any other activities that conflict with Employee's obligations to the Company.

5. **Returning Company Documents.** At the time of leaving the employ of the Company, Employee covenants that Employee shall deliver to the Company (and will not keep in Employee's possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, social media content, social media followers and social media access to password information, or reproductions of any aforementioned items developed by Employee pursuant to Employee's employment with the Company or otherwise belonging to the Company, its successors or assigns, including, without limitation, those records maintained pursuant to Section 2. Employee agrees not to copy, delete, or alter any information contained upon Employee's Company computer or Company equipment before Employee returns it to the Company. In addition, if Employee has used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, Employee agrees to provide the Company with a computer useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and Employee agrees to provide the Company access to Employee's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Employee further agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company's personnel at any time with or without notice.

6. **Notification of New Employer.** In the event that Employee leaves the employ of the Company, Employee agrees to grant consent to notification by the Company to Employee's new employer about Employee's rights and obligations under this Agreement.

7. **Non-Solicitation of Employees.** Employee covenants that, for a period of twelve (12) months immediately following the termination of Employee's relationship with the Company for any reason, Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or employees of any Company subsidiaries to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away their employees, either for Employee or for any other person or entity.

8. **Conflict of Interest Guidelines.** Employee covenants that Employee shall diligently adhere to the Conflict of Interest Guidelines attached as Exhibit C hereto.

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9. **Right to Advice of Counsel.** Employee acknowledges that Employee has had the right to consult with counsel and is fully aware of Employee's rights and obligations under this Agreement.

10. **Successors and Assigns.** This Agreement is for Employee's benefit and the benefit of the Company, its successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon Employee's heirs, executors, administrators and other legal representatives.

a. **Company's Successors.** Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company," shall include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this subsection (a) or which becomes bound by the terms of this Agreement by operation of law.

b. **Employee's Successors.** Without the written consent of the Company, Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. Notwithstanding the foregoing, the terms of this Agreement and all rights of Employee hereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

11. **Notice Clause.**

a. **Manner.** Any notice hereby required or permitted to be given shall be sufficiently given if in writing and delivered in person or sent by facsimile, electronic mail, overnight courier or First Class mail, postage prepaid, to either party at the address of such party or such other address as shall have been designated by written notice by such party to the other party.

b. **Effectiveness.** Any notice or other communication required or permitted to be given under this Agreement will be deemed given (i) upon personal delivery to the party to be notified (ii) on the day when delivered by electronic mail to the proper electronic mail address, (iii) when sent by confirmed facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (iv) the first business day after deposit with a nationally recognized overnight courier, specifying next day delivery, or (v) the third business day after the day on which such notice was mailed, as evidenced by the postmark, in accordance with this Section.

12. **Legal and Equitable Remedies.**

a. Employee agrees that it may be impossible to assess the damages caused by Employee's violation of this Agreement or any of its terms. Employee agrees that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to the Company, and the Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach or threatened breach of this Agreement.

b. To the extent Employee or the Company seek temporary or preliminary relief, Employee agrees that if either the Company or Employee is successful in whole or in part in any such request, motion, or application for legal or equitable relief to enforce this Agreement (including, but not limited to, a court or arbitrator partially or fully granting any application, motion, or petition for injunctive relief, including, but not limited to, a temporary restraining order, preliminary injunction, or permanent injunction), whether against or commenced by Employee, the prevailing party will be entitled to recover from the other all costs, fees, or expenses it incurred at any time during the course of the dispute, including, but not limited to, reasonable attorney's fees. A final resolution

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of such dispute or a final judgment is not a prerequisite to the right to demand payment hereunder and such amounts must be paid by the party against whom the legal or equitable relief has been obtained to the other party within thirty (30) days after written notice of such demand. In the event the prevailing party demands only a portion of such costs, fees, or expenses incurred, such demand shall be without prejudice to further demands for (i) the remainder of any outstanding costs, fees, or expenses incurred, or (ii) costs, fees, or expenses incurred after the prior demand.

13. **Employment At-Will.** Employee agrees and understands that nothing in this Agreement will change Employee's at-will employment status or confer any right with respect to continuation of employment by the Company, nor will it interfere in any way with Employee's right or the Company's right to terminate Employee's employment at any time, with or without Cause or advance notice.

14. **Waiver.** No waiver by the Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement will be construed as a waiver of any other right. The Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

15. **Severability.** The invalidity, illegality, or unenforceability of any provision, subsections, or sentences contained in this Agreement, or any terms hereof, shall not affect the legality, validity or enforceability of any other provision or term of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

16. **Integration.** This Agreement represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal substantive laws, but not the choice of law rules, of the state where you are/were last employed by the Company.

18. **Survival.** This Agreement shall survive the termination of Employee's employment, regardless of the reason, and the assignment of this Agreement by the Company to any successor in interest or other assignee.

19. **Entire Agreement.** This Agreement, together with any Exhibit(s) hereto (incorporated herein by reference), is the final, complete and exclusive agreement between me and the Company with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us; provided, however, prior to the execution of this Agreement, if the Company and I were parties to any agreement regarding the subject matter hereof, that agreement will be superseded by this Agreement prospectively only. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

20. **Protected Activity Not Prohibited.** Employee understands that nothing in this Agreement limits or prohibits Employee from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board ("Government Agencies"), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company, discussing the terms and conditions of employment with

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others to the extent expressly permitted by Section 7 of the National Labor Relations Act. Notwithstanding, in making any such disclosures or communications, Employee agrees to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Confidential Information to any parties other than the Government Agencies. Further, Employee understands that nothing in this agreement prevents Employee from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Employee has reason to believe is unlawful. However, in the event of any subpoena or other legal process requiring Employee's disclosure of any Confidential Information, to the fullest extent permitted by law, Employee agrees to provide the Company with notice (and a reasonable opportunity to object) before any disclosure by Employee.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

IN WITNESS WHEREOF, Employee and the Company, hereby declare that they, and each of them, has read the foregoing Employee Confidentiality, Non-Disclosure, and Inventions Assignment Agreement and understands and acknowledges the significance and consequence of it, and has executed this Agreement, in the case of the Company by their duly authorized officers, voluntarily and with full understanding of its consequences, as of the day and year first above written.

ENERGY VAULT HOLDINGS, INC.

By: /s/ Gonca Icoren
Name: Gonca Icoren
Title: Chief People Officer

EMPLOYEE

Signature: /s/ Christopher Wiese
Name: Christopher Wiese
Title: Chief Operating Officer

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EXHIBIT A

LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description
1) Systems And Methods For Forecasting Demand For A Subcomponent	Oct2007	#US07280882
2) EMI protection housing and connector seal for circuit packs installed in electronics systems	Apr2008	#US20080080158
3) Compact Functionally Layered Electronics System	Feb2008	#US20080040885
4) Systems And Methods For Prioritizing And Tracking Cost Reduction Projects	Sep2007	#US20070219931
5) Systems And Methods For Determining Cost Targets For Cost Reduction Projects	Sep2007	#US20070226091
6) Systems And Methods For Reducing Stranded Inventory	Sep2007	#US20070220047
7) Systems And Methods For Selecting A Least Cost Technology	Sep2007	#US20070219930
8) Systems And Methods For Managing Cost Reduction Projects To Increase Cost Savings For Replacement Subcomponents	Sep2007	#US20070226092
9) Business Tool For Return On Investment Analysis	Sep2006	#USID5127947
10) Economic Build-Out Analysis and GA Advance/Delay Tool For Savings Optimization	Feb2006	#US20070127954

_____ No inventions or improvements

_____ Additional Sheets Attached

Signature of Employee: **/s/ Christopher Wiese**
Name: Christopher Wiese
Title: Chief Operating Officer

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EXHIBIT B

INVENTIONS ASSIGNMENT NOTICE

If Employee is employed by the Company in the State of Delaware, the following provision applies:

Delaware Code, Title 19, § 805. Employee's right to certain inventions.

Any provision in an employment agreement which provides that the employee shall assign or offer to assign any of the employee's rights in an invention to the employee's employer shall not apply to an invention that the employee developed entirely on the employee's own time without using the employer's equipment, supplies, facility or trade secret information, except for those inventions that: (i) relate to the employer's business or actual or demonstrably anticipated research or development, or (ii) result from any work performed by the employee for the employer. To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable. An employer may not require a provision of an employment agreement made unenforceable under this section as a condition of employment or continued employment.

If Employee is employed by the Company in the State of Illinois, the following provision applies:

Illinois Compiled Statutes Chapter 765, Section 1060/2. Employee Patent Act.

Sec. 2. Employee rights to inventions - conditions. (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this State and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this Section as a condition of employment or continuing employment. This Act shall not preempt existing common law applicable to any shop rights of employers with respect to employees who have not signed an employment agreement.

(3) If an employment agreement entered into after January 1, 1984, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.

If Employee is employed by the Company in the State of Kansas, the following provision applies:

Chapter 44. LABOR AND INDUSTRIES –

Article 1. Employment Agreements assigning employee rights in inventions to employer; restrictions; certain provisions void; notice and disclosure - 44-130.

(a) Any provision in an employment agreement which provides that an employee shall assign or offer to assign any

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of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facilities or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless:

(1) The invention relates to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or

(2) the invention results from any work performed by the employee for the employer.

(b) Any provision in an employment agreement which purports to apply to an invention which it is prohibited from applying to under subsection (a), is to that extent against the public policy of this state and is to that extent void and unenforceable. No employer shall require a provision made void and unenforceable by this section as a condition of employment or continuing employment.

(c) If an employment agreement contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer shall provide, at the time the agreement is made, a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless:

(1) The invention relates directly to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or

(2) the invention results from any work performed by the employee for the employer.

(d) Even though the employee meets the burden of proving the conditions specified in this section, the employee shall disclose, at the time of employment or thereafter, all inventions being developed by the employee, for the purpose of determining employer and employee rights in an invention.

If Employee is employed by the Company in the State of Minnesota, the following provision applies:

Minnesota Statute Section 181.78. SUBDIVISION 1.

Inventions not related to employment. Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this State and is to that extent void and unenforceable. Subdivision 3. If an employment agreement entered into after August 1, 1977 contains a provision requiring the employee to assign or offer to assign any of the employee's rights in any invention to an employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer.

If Employee is employed by the Company in the State of Nevada, the following provision applies:

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Nevada Revised Statutes Section 600.500. Employer is sole owner of patentable invention or trade secret developed by employee.

Except as otherwise provided by express written agreement, an employer is the sole owner of any patentable invention or trade secret developed by his or her employee during the course and scope of the employment that relates directly to work performed during the course and scope of the employment.

If Employee is employed by the Company in the State of North Carolina, the following provision applies:

North Carolina General Statutes Section 66-57.1. EMPLOYEE'S RIGHT TO CERTAIN INVENTIONS.

Any provision in an employment agreement which provides that the employees shall assign or offer to assign any of his rights in an invention to his employer shall not apply to an invention that the employee developed entirely on his own time without using the employer's equipment, supplies, facility or trade secret information except for those inventions that (i) relate to the employer's business or actual or demonstrably anticipated research or development, or (ii) result from any work performed by the employee for the employer. To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this section.

If Employee is employed by the Company in the State of Utah, the following provision applies:

Utah Code, §§ 34-39-2 (Employment Inventions Act) And 34-39-3 (Scope Of Act)

34-39-2. Definitions. As used in this chapter:

(1) "Employment invention" means any invention or part thereof conceived, developed, reduced to practice, or created by an employee which is:

(a) conceived, developed, reduced to practice, or created by the employee:

(i) within the scope of his or her employment;

(ii) on his employer's time; or

(iii) with the aid, assistance, or use of any of his or her employer's property, equipment, facilities, supplies, resources, or intellectual property;

(b) the result of any work, services, or duties performed by an employee for his or her employer;

(c) related to the industry or trade of the employer; or

(d) related to the current or demonstrably anticipated business, research, or development of the employer.

(2) "Intellectual property" means any and all patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks, and service marks and any and all rights, applications, and registrations relating to them.

34-39-3. Scope of act -- When agreements between an employee and employer are enforceable or unenforceable with respect to employment inventions -- Exceptions.

(1) An employment agreement between an employee and his or her employer is not enforceable against the employee to the extent that the agreement requires the employee to assign or license, or to offer to assign or license, to the employer any right or intellectual property in or to an invention that is:

(a) created by the employee entirely on his or her own time; and

(b) not an employment invention.

(2) An agreement between an employee and his employer may require the employee to assign or license, or to offer to assign or license, to his or her employer any or all of his or her rights and intellectual property in or to an employment invention.

(3) Subsection (1) does not apply to:

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(a) any right, intellectual property or invention that is required by law or by contract between the employer and the United States government or a state or local government to be assigned or licensed to the United States; or
(b) an agreement between an employee and his or her employer which is not an employment agreement.

(4) Notwithstanding Subsection (1), an agreement is enforceable under Subsection (1) if the employee's employment or continuation of employment is not conditioned on the employee's acceptance of such agreement and the employee receives a consideration under such agreement which is not compensation for employment.

(5) Employment of the employee or the continuation of his employment is sufficient consideration to support the enforceability of an agreement under Subsection (2) whether or not the agreement recites such consideration.

(6) An employer may require his or her employees to agree to an agreement within the scope of Subsection (2) as a condition of employment or the continuation of employment.

(7) An employer may not require his or her employees to agree to anything unenforceable under Subsection (1) as a condition of employment or the continuation of employment.

(8) Nothing in this chapter invalidates or renders unenforceable any employment agreement or provisions of an employment agreement unrelated to employment inventions.

If Employee is employed by the Company in the State of Washington, the following provision applies:

TITLE 49. LABOR REGULATIONS - CHAPTER 49.44. VIOLATIONS - PROHIBITED PRACTICES

- (i) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.
 - (ii) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.
 - (iii) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.
-

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EXHIBIT C

CONFLICT OF INTEREST GUIDELINES

It is the policy of Energy Vault Holdings, Inc. (the "Company") to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees and independent contractors must avoid activities which are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations which must be avoided. Any exceptions must be reported to the President and written approval for continuation must be obtained.

1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended. (The Employee Confidentiality, Non-Disclosure, and Invention Assignment Agreement elaborates on this principle and is a binding agreement.)
2. Accepting or offering substantial gifts, excessive entertainment, favors or payments which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.
3. Participating in civic or professional organizations that might involve divulging confidential information of the Company.
4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement.
5. Initiating or approving any form of personal or social harassment of employees.
6. Investing or holding outside directorship in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company.
7. Borrowing from or lending to employees, customers or suppliers.
8. Acquiring real estate of interest to the Company.
9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist.
10. Unlawfully discussing prices, costs, customers, sales or markets with competing companies or their employees.
11. Making any unlawful agreement with distributors with respect to prices.
12. Improperly using or authorizing the use of any inventions which are the subject of patent claims of any other person or entity.
13. Engaging in any conduct which is not in the best interest of the Company.

Each officer, employee and independent contractor must take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of higher management for review. Violations of this conflict of interest policy may result in discharge without warning.

CREDIT AGREEMENT

dated as of March 31, 2025,

among

**CALISTOGA RESILIENCY CENTER, LLC,
as Borrower,**

**JEFFERIES FINANCE LLC,
as Administrative Agent, Collateral Agent and Sole Lead Arranger,**

and

**THE LENDERS NAMED HEREIN
as Lenders**

\$27,826,365.17

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Exhibit H	Form of Solvency Certificate
Exhibit I	Form of Mortgage
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CREDIT AGREEMENT

This Credit Agreement dated as of March 31, 2025, is among CALISTOGA RESILIENCY CENTER, LLC, a Delaware limited liability company (“Borrower”), the lenders party hereto from time to time (the “Lenders”), and Jefferies Finance LLC, as administrative agent (in such capacity, the “Administrative Agent”) and collateral agent (in such capacity, the “Collateral Agent”) for such Lenders.

The parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Certain Defined Terms. As used in this Agreement, the terms defined above shall have the meanings set forth therein and the following terms shall have the following meanings (unless otherwise indicated, such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“2024 Financials” has the meaning specified in Section 3.01(a)(vi).

“Acceptable Security Interest” in any Property means a Lien which (a) exists in favor of the Collateral Agent for the benefit of the Secured Parties, (b) is superior in priority to all Liens or rights of any other Person in the Property encumbered thereby, other than Permitted Liens, (c) secures the Obligations, and (d) is enforceable, except as such enforceability may be limited by any applicable Debtor Relief Laws.

“Additional Project Document” means any contract or agreement relating to the ownership, operation, maintenance, repair, financing or use of the Project entered into by the Borrower with any other Person subsequent to the date of this Agreement (including any contract(s) or agreement(s) entered into in substitution for any Material Project Document that has been terminated in accordance with its terms or otherwise) that (i) requires payments to be made or received in an amount in excess of two million Dollars (\$2,000,000) in the aggregate per year or (ii) is for a term that is greater than two (2) years.

“Administrative Agent” means Jefferies Finance LLC, in its capacity as administrative agent pursuant to Article VIII until its resignation, and any successor administrative agent appointed pursuant to Section 8.06.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent or such other form provided by a Lender and acceptable to the Administrative Agent.

“Advance” means an advance by a Lender to the Borrower pursuant to Section 2.01(a) as part of a Borrowing.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person or any Subsidiary of such Person. The term “control” (including the terms “controlled by” or “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of a Control Percentage, by contract, or otherwise. For purposes of this Agreement and the other Loan Documents, Jefferies LLC and its Affiliates shall be deemed to be Affiliates of Jefferies Finance LLC and its Affiliates.

“Affiliate Transaction” has the meaning specified in Section 6.08.

“Agent Parties” has the meaning set forth in Section 9.09(c)(ii) hereof.

“Agreement” means this Credit Agreement, as the same may be further amended, supplemented, restated, and otherwise modified from time to time.

“Annual Operating Budget” means an operating plan and budget for the fiscal year with respect to the operation and maintenance of the Project, including all anticipated Operating Costs, with allowance for contingencies.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“Applicable Permit” means, at any time, any Permit to be obtained by or on behalf of the Borrower, including any such Permit relating to zoning, environmental or natural resource protection, pollution, sanitation, FERC, CPUC, CAISO, PUHCA, safety, siting or building, importation of technology, equipment and materials, that is (a) material and necessary at such time to the development, construction or operation of the Project to construct, test, operate, maintain, repair, own or use the Project as contemplated by the Transaction Documents, to enter into any Transaction Document or to consummate any transaction contemplated thereby or (b) necessary so that (i) none of the Secured Parties or any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or under California laws or regulations in respect of the rates or the financial or organizational regulation of electric utilities solely as a result of the construction, operation, ownership, leasing or control of the Project or (ii) none of the Borrower nor any Affiliate of the Borrower that is a party to a Transaction Document may be deemed by any Governmental Authority to be subject to, or not exempt from, regulation under PUHCA (other than the FERC regulations implementing PUHCA relating to obtaining EWG status, notice of holding company status and regulatory access to books and records), or under any California laws or regulations respecting the rates or the financial or organizational regulation of electric utilities.

“Applicable Rate” means with respect to any Advance, a rate per annum equal to (a) from the Funding Date through April 4, 2025, 9.50% per annum and (b) from and after April 5, 2025, 15.50% per annum.

“Approved Fund” means any Fund that is administered, managed, advised or sub-advised by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, manages, advises or sub-advises a Lender.

“Asset Sale Prepayment” has the meaning specified in Section 2.04(b)(i).

“Asset Sale Proceeds Prepayment Date” has the meaning specified in Section 2.04(b)(i).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of the attached Exhibit A.

“Attributable Indebtedness” means, on any date of determination, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease Obligation.

“Availability Date” means the date on which the conditions specified in Section 3.03 are satisfied (or waived in accordance with Section 9.03).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means United States Code, 11 U.S.C. §§ 101–1532.

“Bankruptcy Event” means, with respect to any Person, such Person (a) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, (b) has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, (c) makes a general assignment for the benefit of creditors or (d) admits in writing its inability to pay its debts generally as they become due.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Blocked Account” means that certain deposit account number 174669-002 maintained by the Borrower with Wilmington Trust, National Association, as the depository institution.

“Bona Fide Debt Fund” means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit in the ordinary course.

“Borrowed Debt” means any Indebtedness for money borrowed, including loans, hybrid securities, debt convertible into Equity Interests and any Indebtedness represented by notes, bonds, debentures or other similar evidences of Indebtedness for money borrowed.

“Borrowed Debt Prepayment” has the meaning specified in Section 2.04(b)(ii).

“Borrowed Debt Proceeds Prepayment Date” has the meaning specified in Section 2.04(b)(ii).

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“Borrowing” means a borrowing consisting of Advances made on the same day by the Lenders pursuant to Section 2.01(a).

“Business Day” means a day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York.

“Capital Expenditures” means, for any period, the aggregate amount of all expenditures of the Borrower payable during such period which, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower, but excluding each of the following items, to the extent such item would otherwise be included as “Capital Expenditures”:

(a) costs and expenses constituting Operating Costs (other than Permitted Capital Expenditures) or project costs or costs and expenses paid with amounts on deposit in the Blocked Account;

(b) the purchase price of equipment that is purchased simultaneously with the trade in of existing equipment to the extent that the gross amount of such purchase price is less than any credit granted by the seller of such equipment for the equipment being traded in at such time;

(c) payments in respect of Capital Lease Obligations permitted under this Agreement;
and

(d) expenditures to the extent the Borrower has received or has an unconditional commitment to receive reimbursement in cash from a Person that is not an Affiliate of the Borrower and for which the Borrower has not provided or is not required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person without such reimbursement.

“Capital Lease” means any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any Capital Lease, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Casualty Event” means the damage, destruction or condemnation, including by process of eminent domain or any Disposition of property in lieu of condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, state and local analogs, and all rules and regulations and requirements thereunder in each case as now or hereafter in effect.

“Change in Control” means any of the following:

(a) Sponsor shall cease to legally and beneficially own and control, directly or indirectly, 100% of the common voting interests in the Borrower;

(b) Pledgor shall cease to legally and beneficially directly own and control 100% of the common voting interests in the Borrower.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory

authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Closing Date” means the date on which the conditions specified in Section 3.01 are satisfied (or waived in accordance with Section 9.03).

“Code” means the Internal Revenue Code of 1986, as amended, and any successor statute.

“Collateral” means all “Collateral” and “Pledged Collateral” (as defined in the Security Agreement) or similar terms used in the Security Instruments; provided that, notwithstanding anything to the contrary in the Loan Documents, Collateral shall in no event include any Excluded Assets.

“Collateral Agent” means Jefferies Finance LLC, in its capacity as collateral agent pursuant to Article VIII until its resignation, and any successor collateral agent appointed pursuant to Section 8.06.

“Commitment” means, with respect to each Lender, its obligation to make an Advance to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Advance to be made by such Lender hereunder, as such commitment may be modified from time to time pursuant to Section 2.03 or Article VII or otherwise under this Agreement, including pursuant to assignments by or to such Lender pursuant to Section 9.07(b). The amount of each Lender’s Commitment on the Closing Date is set forth opposite such Lender’s name on Annex I. The aggregate Commitments on the Closing Date are \$27,826,365.17.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

“Conditions to Conversion” means that (i) all of the conditions set forth in Section 4 of the Note Purchase Agreement have been satisfied and (ii) the Notes and the Security Instruments have been amended and restated to conform to the terms of or contemplated by the Note Purchase Agreement.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Construction Budget and Schedule” means a reasonably detailed schedule of the development and construction of the Project and a reasonably detailed total budget for the Project, as prepared by the Borrower and approved by the Administrative Agent (in consultation with the Independent Engineer) and containing a reasonably detailed description of project costs incurred and expected to be incurred with respect to the development and construction of the Project, for

the period commencing on the date of such Construction Budget and Schedule through the Guaranteed Substantial Completion Date (as such term is defined in the EPC Contract) for the Project.

“Control Percentage” means, with respect to any Person, the percentage of the outstanding Voting Securities (including any options, warrants or similar rights to purchase such Voting Securities) of such Person having ordinary voting power which gives the direct or indirect holder of such Voting Securities the power to elect a majority of the board of directors (or other applicable governing body) of such Person.

“Conversion” means conversion of the Indebtedness as described in Section 2.15.

“Conversion Date” means the date that the Conditions to Conversions are satisfied.

“Conversion Notice” means a written notice to be delivered on the Conversion Date by the Lenders to the Borrower, Collateral Agent and Administrative Agent (a) stating that the Conditions to Conversion have been satisfied and (b) confirming the Conversion Date.

“CPUC” means the California Public Utilities Commission.

“Debt Service” means, as of any period of determination, the aggregate amount of fees, interest and principal on account of the Advances (including any scheduled payments thereon but excluding any extraordinary mandatory redemptions), due and payable by the Borrower during such period of determination.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Declined Proceeds” has the meaning specified in Section 2.04(b)(iv).

“Default” means (a) an Event of Default or (b) any event or condition which with notice or lapse of time or both would become an Event of Default.

“Default Rate” means a per annum rate equal to (a) in the case of principal of any Advance, 2.00% plus the rate otherwise applicable to such Advance as provided in Section 2.08(a), and (c) in the case of any other Obligation, 2.00% plus the non-default rate applicable to Advances as provided in Section 2.08(a).

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Advances within two Business Days of the date such Advances were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to

funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent and the Borrower to confirm in writing to the Administrative Agent, and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

"Deposit Account" shall have the meaning given to the term in the Uniform Commercial Code (or any successor statute), as adopted and in force in the State of New York or, when the laws of any other state govern the method or manner of the perfection or enforcement of any Lien in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such other state.

"Disposition," "Dispose" or "Disposed" means any sale, lease, transfer, assignment, farm-out, conveyance, release, abandonment, or other disposition of any Property (including the grant or transfer of any working interest, overriding royalty interest, production payments, net profits interest, royalty interest, or mineral fee interest), including any Casualty Event and the issuance of Equity Interests in any of the Subsidiaries or the sale of Equity Interests in any of Borrower's Subsidiaries other than statutory or directors qualifying shares.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Advances and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Advances and all other Obligations that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provide for the scheduled payment of dividends in cash or other Property, or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date; provided that if such Equity Interests is issued pursuant to a plan for the benefit of Borrower or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Lenders” means (i) those Persons identified by the Borrower (or one of its Affiliates) to the Administrative Agent in writing on or prior to the date hereof (and such Persons’ Affiliates clearly identifiable as such solely on the basis of their names), (ii) competitors (and such competitors’ sponsors and Affiliates identified in writing or clearly identifiable as such solely on the basis of their names, other than a sponsor or Affiliate that is a Bona Fide Debt Fund) of the Borrower separately identified by the Borrower to the Administrative Agent in writing from time to time and (iii) any Affiliate of any competitor described in clause (ii) that is identified by the Borrower to the Administrative Agent in writing from time to time or reasonably identifiable solely by name as an Affiliate of such Person, other than an Affiliate of such Person that is a Bona Fide Debt Fund; provided that no updates to the Disqualified Lender list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation in respect of the Advances from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders. Any supplement to the list of Disqualified Lenders pursuant to clause (ii) or (iii) above shall be made by the Borrower to the Administrative Agent in writing (including by email) and such supplement shall take effect the same Business Day such notice is received by the Administrative Agent. The list of Disqualified Lenders shall be made available to any Lender upon request to the Administrative Agent.

“Dollars” and “\$” means lawful money of the United States of America.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority,

(b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Material Project Document” means, with respect to any Material Project Document, that such Material Project Document (a) has been executed and delivered by each party thereto, (b) all conditions precedent to the effectiveness of such Material Project Document have been satisfied or waived and (c) such Material Project Document is in full force and effect.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 9.07(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 9.07(b)(iii)).

“Employee Benefit Plan” means an “employee benefit plan” (as defined in Section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Borrower or any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate may have any liability.

“Environment” or “Environmental” means ambient air, indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources (including wetlands, flora and fauna), the workplace or as otherwise defined in any Environmental Law.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, orders, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by or on behalf of the Borrower) or proceedings arising as a result of any actual or alleged violation of or liability under any Environmental Law or relating to any Permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Materials (in each case, to the extent relating to human exposure to Hazardous Materials) or alleged injury or threat of injury to public health, safety or the Environment.

“Environmental Law” means any Legal Requirement relating to pollution and the protection of the environment or the use or Release into the environment of any Hazardous Materials.

“Environmental Permit” means any permit, license, consent, order, approval, registration, exemption or other authorization required by or from a Governmental Authority under Environmental Law.

“EPC Contract” means the Engineering, Procurement, and Construction Agreement between Energy Vault, Inc., a Delaware corporation, and Calistoga Resiliency Center, LLC, a Delaware limited liability company, dated as of November 18, 2024.

“Equity Interest” means with respect to any Person, any shares, interests, participation, or other equivalents (however designated) of corporate stock, membership interests or partnership interests (or any other ownership interests) of such Person.

“Equity Issuance” means any issuance by Borrower of shares of its Equity Interests.

“Equity Issuance Prepayment” has the meaning specified in Section 2.04(b)(iii).

“Equity Issuance Proceeds Prepayment Date” has the meaning specified in Section 2.04(b)(iii).

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Borrower under Section 414 of the Code.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Abandonment” means, with respect to the Project, the suspension or cessation for a period of at least sixty (60) consecutive days of all or substantially all of the operation and maintenance activities at the Project; provided, however, that any such suspension or cessation that arises from an Event of Loss, a requirement of law, an event of force majeure, curtailment or failure to be dispatched, or other bona fide business reasons shall not constitute an Event of Abandonment, in each case, so long as the Borrower is taking commercially reasonable actions to overcome or mitigate the effects of the cause of suspension or cessation so that maintenance and/or operations, as the case may be, can be resumed. Any period of cessation or suspension shall end on the date that operation and maintenance activities of a substantial nature are resumed.

“Event of Default” has the meaning specified in Section 7.01.

“Event of Loss” means any event that causes all or substantially all of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever and, in each case, shall include an Event of Taking.

“Event of Taking” means any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action of or proceeding by any Governmental Authority relating to all or substantially all of the Project, any equity interests in the Borrower or any other part of the Collateral.

“EWG” means an exempt wholesale generator as defined under 18 C.F.R. § 366.1 (2024)

“Excluded Assets” has the meaning specified in the Security Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an Advance or Commitment pursuant to a Legal Requirement in effect on the date on which (i) such Lender acquires such interest in the Advance or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.14) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 2.13, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.13(f) and (d) any withholding Taxes imposed under FATCA.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted median of the rates on overnight federal funds transactions with members of the Federal Reserve System reported by depository institutions on such day for individual transactions, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding

Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent (in its individual capacity) on such day on such transactions as determined by the Administrative Agent, and (c) in any event, the Federal Funds Rate shall not be less than zero.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any of its successors.

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Financial Model” means the financial model of the Borrower dated February 26, 2025, as approved by the Lenders.

“Flood Hazard Property” is defined in Section 3.03(p).

“Flood Insurance Laws” shall mean (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), as the same may be amended or recodified from time to time, (d) the Flood Insurance Reform Act of 2004 and (e) the Biggert Waters Flood Reform Act of 2012 and, in each case, any regulations promulgated thereunder.

“Foreign Lender” means a Lender that is not a U.S. Person.

“FPA” means the Federal Power Act, as amended, and FERC’s regulations promulgated thereunder.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funding Date” means the date on which the conditions specified in Section 3.02 are satisfied (or waived in accordance with Section 9.03).

“GAAP” means United States generally accepted accounting principles as in effect from time to time, applied on a basis consistent with the requirements of Section 1.03.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuming in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (whether in whole or in part).

“Guaranty” means a guaranty agreement substantially the form of the attached Exhibit B and executed by the Sponsor, as may be modified by the Borrower and the Administrative Agent.

“Hazardous Materials” means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law and (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the Environment and are or become regulated by any Governmental Authority including, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

“Hedge Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, puts, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such

master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Contracts, (a) for any date on or after the date such Hedge Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Contracts (which may include a Lender or any Affiliate of a Lender).

“Indebtedness” means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including, without limitation, all obligations under non-competition, earn-out or similar agreements), except trade payables arising in the ordinary course of business not more than ninety (90) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person;

(c) the Attributable Indebtedness of such Person and all outstanding payment obligations with respect to such Person’s Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all Indebtedness of any other Person secured by a Lien on any property owned by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) all obligations, contingent or otherwise, of any such Person relative to letters of credit and banker’s acceptances issued for the account of any such Person;

(f) all obligations of any such Person in respect of Disqualified Equity Interests;

(g) all obligations of such Person under any Hedge Contract; and

(h) all Guarantees of any such Person with respect to any of the foregoing.

The Indebtedness of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnatee” has the meaning set forth in Section 9.02(a) hereof.

“Independent Engineer” means E3 Consulting or any other nationally recognized independent engineer with relevant experience appointed after the Closing Date by the Borrower with the consent of the Majority Lenders.

“Initial Delivery Date” means the date on which the Project achieves the “Initial Delivery Date” under and as defined in the Power Purchase Agreement.

“Insurance Consultant” means Blades, Crout & Proulx LLC, or any other nationally recognized insurance consultant with relevant experience appointed after the Closing Date by the Borrower with the consent of the Majority Lenders.

“Interconnection Agreement” means the Gas and Electric Extension Agreement, dated July 10, 2024, by and between the Borrower and Power Purchaser.

“Investment” means, as to any Person, any direct or indirect purchase, acquisition or investment by such Person, constituting (a) the purchase or other acquisition of Equity Interests or other securities of another Person, (b) a loan, advance or capital contribution to, guarantee (by guaranty or other arrangement) or assumption of Indebtedness of, or purchase or other acquisition of any other Indebtedness or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of substantially all or a material portion of the business or assets of another Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any cash repayments of loans, cash return of Investments or other cash dividends or return of capital.

“Investment Grade Rating” means a Person whose long-term unsubordinated debt has been assigned a credit rating of “BBB-” or better by S&P or “Baa3” or better by Moody’s.

“Lead Arranger” means Jefferies Finance LLC, in its capacity as lead arranger.

“Legal Requirement” means, as to any Person, any law, statute, ordinance, decree, requirement, order, judgment, rule, regulation (or official interpretation of any of the foregoing)

of, and the terms of any license or Permit issued by, any Governmental Authority, including, but not limited to, Regulations T, U, and X, which is applicable to such Person.

“Lender” means a party hereto that (a) is a lender listed on the signature pages of this Agreement on the date hereof or (b) is an Eligible Assignee that became a lender under this Agreement pursuant to Section 2.14 or 9.07 but, in each case, excluding any Person who ceases to be a Lender pursuant to the terms of this Agreement.

“Lender Parties” means Lenders, the Lead Arranger, the Administrative Agent and the Collateral Agent.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Lien” means any mortgage, lien, pledge, assignment, charge, deed of trust, security interest, hypothecation, preference, deposit arrangement or encumbrance (or other type of arrangement having the practical effect of the foregoing) to secure or provide for the payment of any obligation of any Person, whether arising by contract, operation of law, or otherwise (including, without limitation, the interest of a vendor or lessor under any conditional sale agreement, Synthetic Lease, Capital Lease, or other title retention agreement).

“Liquid Investments” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States maturing within 120 days from the date of any acquisition thereof;

(b) (i) negotiable or nonnegotiable certificates of deposit, time deposits, or other similar banking arrangements maturing within 120 days from the date of acquisition thereof (“bank debt securities”), issued by (A) any Lender (or any Affiliate of any Lender) or (B) any other bank or trust company so long as such certificate of deposit is pledged to secure the Borrower’s or any Subsidiaries’ ordinary course of business bonding requirements, or any other bank or trust company which has primary capital of not less than \$500,000,000, if at the time of deposit or purchase, such bank debt securities are rated not less than “AA” (or the then equivalent) by the rating service of Standard & Poor’s Ratings Group or of Moody’s Investors Service, Inc., and (ii) commercial paper issued by (A) any Lender (or any Affiliate of any Lender) or (B) any other Person if at the time of purchase such commercial paper is rated not less than “A-1” (or the then equivalent) by the rating service of Standard & Poor’s Ratings Group or not less than “P-1” (or the then equivalent) by the rating service of Moody’s Investors Service, Inc., or upon the discontinuance of both of such services, such other nationally recognized rating service or services, as the case may be, as shall be selected by the Borrower with the consent of the Majority Lenders;

(c) deposits in money market funds investing exclusively in investments described in clauses (a) and (b) above; and

(d) repurchase agreements relating to investments described in clauses (a) and (b) above with a market value at least equal to the consideration paid in connection therewith, with any Person who regularly engages in the business of entering into repurchase agreements and has a combined capital surplus and undivided profit of not less than \$500,000,000, if at the time of entering into such agreement the debt securities of such Person are rated not less than “AA” (or the then equivalent) by the rating service of Standard & Poor’s Ratings Group or of Moody’s Investors Service, Inc.

“Loan Documents” means this Agreement, the Notes, the Guaranty (if applicable), the Security Instruments and each other agreement, instrument, or document executed by the Borrower at any time in connection with this Agreement. For the avoidance of doubt, “Loan Documents” does not include Hedge Contracts.

“Majority Lenders” means Lenders holding more than 50% of the aggregate unpaid principal amount of the Advances; provided that, if no Advances are then outstanding, “Majority Lenders” shall mean Lenders having more than 50% of the aggregate Commitments at such time.

“Material” means material in relation to the business, operations, affairs, financial condition, assets, or properties of the Company taken as a whole.

“Material Adverse Change” means any material adverse change in, or material adverse effect on, (a) the business, property, operations, or condition (financial or otherwise) of the Borrower, (b) the ability of the Borrower to perform any of its obligations under this Agreement and the other Loan Document to which it is a party, (c) the validity or enforceability of any of this Agreement and the other Loan Documents or (d) the rights or remedies of or benefits available to the Administrative Agent, the Collateral Agent, any other agent or the Lenders under this Agreement and the other Loan Documents.

“Material Project Documents” means, collectively, the Power Purchase Agreement, the EPC Contract, the O&M Agreement, the Interconnection Agreement, the Site Lease and any Additional Project Documents, as of the applicable time of determination, then in force and effect.

“Maturity Date” means April 23, 2025.

“Maximum Rate” means the maximum nonusurious interest rate under applicable law (determined under such laws after giving effect to any items which are required by such laws to be construed as interest in making such determination, including without limitation if required by such laws, certain fees and other costs).

“Mortgage” means each deed of trust made by the Borrower in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, substantially in the form of Exhibit I (Form of Mortgage), as may be modified by the Borrower and the Administrative Agent.

“Mortgaged Property” or “Mortgaged Properties” means the real property in Calistoga, California identified as the “Property” in the Site Lease and identified in Schedule 1.01, attached hereto and made a part hereof, together with any after acquired real property, as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the provisions of Section 3.03 or 5.11 of this Agreement. For the avoidance of doubt, after acquired Property interests shall not be considered Mortgaged Property until such time as the Borrower actually acquires such after acquired Property interests and same are subjected to the Lien of a Mortgage pursuant to Section 5.11.

“Multiemployer Plan” means any Employee Benefit Plan that is a “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA).

“Net Cash Flow” means in respect of any period, (i) the sum of the following (without duplication): (1) aggregate Project Revenues received by the Borrower during such period; plus (2) any other revenues received by the Borrower, *less* (ii) the sum of the following (without duplication): (1) the Operating Costs paid during such period with Project Revenues; and (2) all Capital Expenditures (to the extent not funded from any source other than Project Revenues paid during such period).

“Net Cash Proceeds” means, with respect to:

(a) any Disposition or Casualty Event, all cash and Liquid Investments received (directly or indirectly but only as actually received) by the Borrower from such Disposition after payment of all reasonable out of pocket fees and expenses actually incurred by the Borrower in connection with such Disposition minus (i) Taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), minus (ii) if applicable, the principal amount of any Indebtedness that is secured (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) by such asset (if any) and that is required to be repaid in connection with such Disposition or Casualty Event thereof (other than the Advances), and minus (iii) any amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustments associated with such Disposition (other than any Taxes deducted pursuant to clause (i) above) (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such Disposition or Casualty Event occurring on the date of such reduction. For purposes of calculating the amount of Net Cash Proceeds, fees, commissions and other costs and expenses payable to the Borrower or any Subsidiary shall be disregarded; and

(b) the issuance of Equity Interests, the excess of (i) the cash and Liquid Investments received in connection with such issuance over (ii) the underwriting discounts and commissions

and other fees, expenses and Taxes incurred by the Borrower in connection with such issuance (or, if such fees or expenses have not yet then been incurred or invoiced, good faith estimates thereof).

“Non-Consenting Lender” means any Lender that does not consent to a proposed agreement, amendment, waiver, consent or release with respect to this Agreement or any other Loan Document that (i) requires the consent of each Lender or each Lender affected thereby and (ii) has been approved by the Majority Lenders.

“Note Purchase Agreement” means the Note Purchase Agreement to be executed by the Borrower and the purchasers thereunder, in the form attached hereto as Exhibit J along with any further modifications as agreed by the Borrower and the Lenders prior to April 5, 2025.

“Notes” means a promissory note of the Borrower payable to any Lender in the amount of such Lender’s Commitment, in substantially the form of the attached Exhibit C, evidencing indebtedness of the Borrower to such Lender resulting from Advances owing to such Lender.

“Notice of Borrowing” means a notice of borrowing substantially in the form of the attached Exhibit D signed by a Responsible Officer of the Borrower.

“O&M Agreement” means the Operation and Maintenance Agreement, dated as of November 7, 2024, by and between the O&M Provider and the Borrower, as further amended, amended and restated, or otherwise modified through the date of this Agreement.

“O&M Provider” means Energy Vault, Inc.

“Obligations” means all principal, interest (including post-petition interest), fees, reimbursements, indemnifications, premiums and other amounts payable by the Borrower to the Administrative Agent, the Collateral Agent, or the Lenders under the Loan Documents, including any post-petition interest in the event of a bankruptcy, to the extent such interest is enforceable by applicable Legal Requirement.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Operating Costs” means, for any period, the sum, computed without duplication among any of the following categories or from period to period, of the following: (a) cash operation, maintenance (including major maintenance costs) and administrative costs relating to the Project or any portion thereof and ordinary course fees, royalties and costs, including those paid or payable to the O&M Provider pursuant to the O&M Agreement; plus (b) Permitted Capital Expenditures and expenses for operating the Project and maintaining the Project in good repair and operating condition in accordance with Prudent Industry Practices paid or payable during such period, including to the counterparties to the Material Project Documents as required pursuant to the Material Project Documents; plus (c) insurance costs paid or payable in respect of insurance maintained or required to be maintained in respect of the Project during such period; plus (d)

applicable sales and excise taxes (if any) paid or payable or reimbursable by the Borrower during such period; plus (e) franchise taxes paid or payable by the Borrower during such period; plus (f) property taxes paid or payable by the Company during such period; plus (g) any other direct taxes (if any) paid or payable by the Borrower during such period; plus (h) costs and fees attendant to the obtaining and maintaining in effect the Applicable Permits paid or payable during such period; plus (i) legal, accounting and other professional fees attendant to any of the foregoing items paid or payable during such period; plus (j) any fees, expenses and indemnification payments of the Secured Parties during such period not included in Debt Service; plus (k) all other cash expenses paid or payable by the Borrower in the ordinary course of business in connection with the operation of the Project. Operating Costs shall exclude, to the extent included above: (i) payments into the Blocked Account during such period; (ii) payments of any kind with respect to Restricted Payments during such period, except as permitted under Section 6.05; (iii) depreciation for such period; and (iv) any payments of any kind with respect to any restoration of the Project during such period.

“Operating Lease” means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Advance, Commitment or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment required by the Borrower pursuant to Section 2.14).

“Participant” has the meaning set forth in Section 9.07(d) hereof.

“Participant Register” has the meaning set forth in Section 9.07(d) hereof.

“Patriot Act” means the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Permit” means any approval, certificate of occupancy, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from any Governmental Authority, including without limitation, an Environmental Permit.

“Permitted Capital Expenditures” means Capital Expenditures consistent with the Construction Budget and Schedule or the then current Annual Operating Budget (a) incurred for the purpose of permitting (i) the Borrower to comply with applicable Legal Requirements (including any Environmental Laws) and Applicable Permits or (ii) the Project to operate in accordance with the projections and budget set forth in the Financial Model or (b) as required to operate the Project in accordance with Prudent Industry Practices.

“Permitted Liens” means the Liens permitted under Section 6.01; provided that (1) Liens described in Section 6.01 shall remain “Permitted Liens” only for so long as no action to enforce such Lien has been commenced or such Liens are being diligently contested in good faith by appropriate proceedings and adequate reserves have been made in accordance with GAAP, and (2) no intention to subordinate the priority of the Lien granted in favor of the Administrative Agent and the Secured Parties is to be hereby implied or expressed by the permitted existence of any Permitted Liens.

“Permitted Refinancing Debt” means unsecured Indebtedness of the Borrower and its Affiliates (for purposes of this definition, “new Debt”) incurred in exchange for, or proceeds of which are used to extend, refinance, renew, replace, defease, discharge, refund or otherwise retire for value, in whole or in part, any other Indebtedness of any of the Borrower (the “Refinanced Debt”); provided that (a) such new Debt is in an aggregate principal amount not in excess of the sum of (i) the aggregate principal amount then outstanding of the Refinanced Debt (or, if the Refinanced Debt is exchanged or acquired for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration thereof, such lesser amount) and (ii) an amount necessary to pay all accrued (including, for the purposes of defeasance, future accrued) and unpaid interest on the Refinanced Debt and any fees and expenses, including premiums, related to such exchange or refinancing; (b) such new Debt has a stated final maturity no earlier than the sooner to occur of (i) the date that is 91 days after the Maturity Date (as in effect on the date of incurrence of such new Debt) and (ii) the stated final maturity date of the Refinanced Debt; (c) such new Debt has an average life at the time such new Debt is incurred that is no shorter than the shorter of (i) the period beginning on the date of incurrence of such new Debt and ending on the date that is 91 days after the Maturity Date (as in effect on the date of incurrence of such new Debt) and (ii) the average life of the Refinanced Debt at the time such new Debt is incurred; (d) the covenants of such new Debt, when taken as a whole, are not materially more onerous to the Borrower than those imposed by the Refinanced Debt, as determined in good faith by a Responsible Officer; (e) if the Refinanced Debt was subordinated in right of payment to the Obligations, such new Debt (and any guarantees thereof) is subordinated in right of payment to the Obligations (or, if applicable, the guarantees under the Guaranty) to at least the same extent as the Refinanced Debt; and (f) the primary obligations with respect to such new Debt may not be incurred by anyone other than the Borrower.

“Permitted Tax Distributions” means with respect to any taxable period (or portion thereof) for which the Borrower is a member of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal or applicable U.S. state or local or non-U.S. income tax purposes of which a direct or indirect parent of the Borrower is the common parent (each, a “Consolidated Tax Group”), or for which the Borrower is a partnership or disregarded entity for U.S. federal or applicable U.S. state or local or non-U.S. income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Borrower or an applicable subsidiary, as may be relevant, to any direct or indirect parent of the Borrower in an amount required to pay any U.S. federal, state or local and/or non-U.S. income taxes (as applicable) of such Consolidated Tax Group or of such direct or indirect parent of the Borrower, as applicable, that are attributable to the taxable income of the Borrower for such taxable period; provided that for each such taxable period, the amount of distributions shall not exceed the amount of any U.S. federal, state or local and/or non-U.S. income taxes that the Borrower would have paid for such taxable period had the Borrower and/or such subsidiaries, as applicable, been a stand-alone corporate taxpayer or stand-alone corporate group (taking into account any net operating losses of the Borrower and/or such subsidiaries and determined not in duplication with any taxes paid directly by Borrower or its subsidiaries).

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, limited liability corporation or company, limited liability partnership, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof or any trustee, receiver, custodian or similar official.

“Platform” has the meaning set forth in Section 9.09(c)(i) hereof.

“Pledge Agreement” has the meaning set forth in Section 3.03(a)(i) hereof.

“Pledgor” means Calistoga Resiliency Center HoldCo, LLC, a Delaware limited liability company.

“Power Purchase Agreement” means that certain Distributed Generation Enabled Microgrid Services Agreement, dated as of December 20, 2022, between the Borrower and the Power Purchaser, as amended, amended and restated, or otherwise modified through the date of this Agreement.

“Power Purchaser” means Pacific Gas and Electric Company, a California corporation.

“PPA Amendment” means that certain Amendment to the Power Purchase Agreement to be entered into by and between the Power Purchaser and the Borrower, pursuant to which, among other things, the Guaranteed Initial Delivery Date (as defined in the Power Purchase Agreement) shall be extended to September 1, 2025.

“Prepayment Date” means, as the context may require, the Asset Sale Proceeds Prepayment Date, the Borrowed Debt Proceeds Prepayment Date or the Equity Issuance Proceeds Prepayment Date.

“Pro Rata Share” means, with respect to any Lender, the ratio (expressed as a percentage) of the outstanding Advances owing to such Lender to the aggregate outstanding Advances owing to all such Lenders.

“Project” means the Calistoga Resiliency Center, a hybrid battery energy storage hydrogen fuel cell electrical power generation facility located in Calistoga, California, and capable of delivering approximately 8.5 MW peak power and 293 MWh over a 48-hour period without refueling while generating.

“Project Revenues” means all revenues of the Borrower from the Project, including all interest paid in respect of any funds on deposit in the Blocked Account, proceeds from any business interruption and delay in start-up insurance, payments received by the Borrower under any Material Project Document, all cash payments received by the Borrower under or in connection with any Hedge Contract, all proceeds of the sale or other disposition of any part of the Project and all income derived from Investments permitted under Section 6.06 and all Tax Credit Transfer Proceeds.

“Property” of any Person means any property or assets (whether real, personal, or mixed, tangible or intangible) of such Person.

“Prudent Industry Practices” means, with respect to any Person, those practices, methods, equipment, specifications and standards of safety, as the same may change from time to time, as are commonly used by energy storage and electric generation facilities of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical generation facility, with commensurate standards of safety, performance, dependability, efficiency and economy. “Prudent Industry Practices” are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the United States electric power generation industry.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“PUHCA” means the Public Utility Holding Company Act of 2005 and FERC’s regulations promulgated thereunder.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Recipient” means (a) the Administrative Agent, and (b) any Lender, as applicable.

“Register” has the meaning set forth in Section 9.07(c) hereof.

“Regulation U” mean Regulation U of the Federal Reserve Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

“Regulations T, U, and X” mean Regulations T, U, and X of the Federal Reserve Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Release” or “Released” means any depositing, spilling, leaking, seepage, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, dispersing, injecting, escaping, leaching, dumping, disposing, emanating, or migrating of any Hazardous Material in, into, onto or through the Environment.

“Required Insurance” has the meaning set forth in Section 5.02 hereof.

“Resignation Effective Date” has the meaning set forth in Section 8.06(a) hereof.

“Response” shall have the meaning set forth in CERCLA or under any other similar Environmental Law.

“Responsible Officer” means (a) with respect to any Person that is a corporation, such Person’s Chief Executive Officer, President, Chief Financial Officer, or Vice President, (b) with respect to any Person that is a limited liability company, such Person’s Chief Executive Officer, President, Chief Financial Officer, or Vice President, or, if such Person has a managing member or manager, the manager or the Responsible Officer of such Person’s managing member or manager, and (c) with respect to any Person that is a general partnership or a limited liability partnership, the Responsible Officer of such Person’s general partner or partners.

“Restricted Payment” means, with respect to any Person, any direct or indirect dividend or distribution (whether in cash, securities or other Property) or any direct or indirect payment of any kind or character (whether in cash, securities or other Property) on account of any Equity Interest of such Person, including in consideration for or otherwise in connection with any retirement, purchase, redemption or other acquisition of any Equity Interest of such Person, or any options, warrants or rights to purchase or acquire any such Equity Interest of such Person; provided that the term “Restricted Payment” shall not include any dividend or distribution payable solely in common Equity Interests of such Person or warrants, options or other rights to purchase such common Equity Interests.

“Returns” has the meaning set forth in Section 4.10(b).

“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC), the European Union, His Majesty’s Treasury, or other relevant sanctions authority.

“SEC” means the United States Securities and Exchange Commission.

“Secured Parties” means the Administrative Agent, the Collateral Agent and the Lenders.

“Security Agreement” means the Security Agreement, in substantially the form of the attached Exhibit F, executed by the Borrower and the Collateral Agent.

“Security Instruments” means, collectively, (a) the Security Agreement, (b) the Pledge Agreement, (c) each other agreement, instrument or document executed at any time in connection with the Security Agreement, and (d) each other agreement, instrument or document executed at any time in connection with securing the Obligations.

“Site Lease” means the Site Lease, dated as of July 18, 2023, by and between the City of Calistoga, California, and the Borrower, as lessee.

“Solvent” means, with respect to the Borrower as of the date of any determination, that on such date (a) the fair value of the assets of the Borrower, exceeds, on a consolidated basis, their liabilities, contingent or otherwise, (b) the present fair saleable value of the assets of the Borrower, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts as such debts become absolute and matured, (c) the Borrower is able to pay their debts and liabilities, contingent or otherwise, as such liabilities mature in the ordinary course of business, and (d) the Borrower, is not engaged in, and is not about to engage in, business for which they have unreasonably small capital. In computing the amount of contingent liabilities at any time, such liabilities shall be computed at the amount which, in light of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Sponsor” means Energy Vault Holdings, Inc., a Delaware corporation.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any Person, a majority of whose outstanding Voting Securities (other than directors’ qualifying shares) shall at any time be owned by such parent or one or more Subsidiaries of such parent. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Borrower.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

“Tax Credit” means the investment tax credit under Section 48 of the Code.

“Tax Credit Transfer” means a transfer of all or a portion of the Tax Credits determined with respect to the Project from the Borrower to a Tax Credit Transferee pursuant to Section 6418 of the Code.

“Tax Credit Transfer Agreement” means, with respect to the Project, an agreement entered into between the Borrower and a Tax Credit Transferee setting forth the terms of a Tax Credit Transfer in form and substance reasonably satisfactory to the Majority Lenders (such approval not to be unreasonably withheld, conditioned or delayed).

“Tax Credit Transfer Agreement Signing Date” means the date of execution of the applicable Tax Credit Transfer Agreement.

“Tax Credit Transfer Documents” means, collectively, the Tax Credit Transfer Agreement and the Tax Credit Transferee Credit Support, if any.

“Tax Credit Transfer Proceeds” means the payments to the Company by the Tax Credit Transferee pursuant to the Tax Credit Transfer Agreement.

“Tax Credit Transferee” means a “transferee taxpayer” (as such term is used in Section 6418 of the Code) which is not related (within the meaning of Code Section 267(b) or 707(b)(1)) to the Borrower, who shall be any Person that (a) (i) (x) (A) has long-term unsecured senior debt obligations rated at least “BBB-” by S&P or at least “Baa3” by Moody’s or such equivalent rating by another ratings agency reasonably acceptable to the Majority Lenders or (B) if an unrated entity, has a minimum tangible net worth of at least \$200,000,000 or (y) otherwise has a creditworthiness reasonably acceptable to the Majority Lenders or (b) has provided the Tax Credit Transferee Credit Support as of the Tax Credit Transfer Agreement Signing Date.

“Tax Credit Transferee Credit Support” means, to the extent that the Tax Credit Transferee does not satisfy the condition in clause (a) of the definition of “Tax Credit Transferee”, either (a)

a letter of credit for the benefit of the Borrower as beneficiary an issuer whose long-term unsecured, unsubordinated indebtedness is rated at least “A-” by S&P, “A3” by Moody’s or “A-” by Fitch or such other ratings agency reasonably acceptable to the Majority Lenders with an initial statement amount that is not less than Tax Credit Transferee’s purchase commitment under the Tax Credit Transfer Agreement or (b) a parent guaranty, for the benefit of the Borrower, in form and substance reasonably acceptable to the Majority Lenders (such approval not to be unreasonably withheld, delayed or conditioned) by either (i) an Affiliate of the Tax Credit Transferee that has (1) has long-term unsecured senior debt obligations rated at least “BBB-” by S&P or at least “Baa3” by Moody’s or such equivalent rating by another ratings agency reasonably acceptable to the Majority Lenders or (2) if an unrated entity, has a minimum tangible net worth of at least \$200,000,000 or (ii) another Person reasonably acceptable to the Majority Lenders.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Trade Date” has the meaning set forth in Section 9.07(b)(i) hereof.

“Transaction Documents” means, collectively, the Material Project Documents and the Loan Documents.

“Transmission System” means the high voltage electric transmission system owned by Power Purchaser with an interconnection at the substation known as CALISTOGA SUB.

“Treasury Management Arrangement” means any agreement or other arrangement governing the provision of treasury or cash management services, including Deposit Accounts, overdraft, credit or debit card, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.13(f)(iii)(B) hereof.

“UCC” shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“Voting Securities” means (a) with respect to any corporation (including any unlimited liability company), capital stock of such corporation having general voting power under ordinary circumstances to elect directors of such corporation (irrespective of whether at the time stock of any other class or classes shall have or might have special voting power or rights by reason of the happening of any contingency), (b) with respect to any partnership, any partnership interest or other ownership interest having general voting power to elect the general partner or other management of the partnership or other Person, and (c) with respect to any limited liability company, membership certificates or interests having general voting power under ordinary circumstances to elect managers (or the individuals performing similar functions) of such limited liability company.

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Computation of Time Periods. In this Agreement, with respect to the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”.

Section 1.03 Accounting Terms; Changes in GAAP. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall (unless otherwise disclosed to the Lenders in writing at the time of delivery thereof) be prepared, in accordance with GAAP applied on a basis consistent with those used in the preparation of the latest financial statements furnished to the Lenders hereunder. All calculations made for the purposes of determining compliance with this Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with those used in the preparation of any financial information furnished to the Lenders pursuant to Section 5.06 hereof most recently delivered prior to or concurrently with such calculations. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth herein, and either the Borrower or the Majority Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Lenders); provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. In addition, all calculations and defined accounting terms used herein shall, unless expressly provided otherwise, when referring to any Person, refer to such Person on a

consolidated basis and mean such Person and its consolidated subsidiaries. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, for purposes of calculations made pursuant to the terms of this Agreement or any other Loan Document, GAAP will be deemed to treat leases that would have been classified as operating leases under generally accepted accounting principles in the United States of America as in effect on December 31, 2017 in a manner consistent with the treatment of such leases under generally accepted accounting principles in the United States of America as in effect on December 31, 2017, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

Section 1.04 [Reserved].

Section 1.05 UCC Terms. Terms defined in the UCC in effect on the date hereof and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

Section 1.06 [Reserved].

Section 1.07 [Reserved].

Section 1.08 Miscellaneous. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) subject to Section 9.07, any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

Section 1.09 Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be

deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE II TERM LOAN

Section 2.01 Commitment for Advances.

(a) Advances. Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make a single Advance to the Borrower on the date requested pursuant to Section 3.02(b) in an amount for each Lender equal to such Lender's Commitment. Any Advances repaid may not be reborrowed.

(b) Evidence of Indebtedness. The Advances made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and the Lenders shall be conclusive absent manifest error of the amount of the Advances made by such Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) the applicable Notes which shall evidence such Lender's Advances to the Borrower in addition to such accounts or records. Each Lender may attach schedules to such Notes and record thereon the date, amount, and maturity of its Advances and payments with respect thereto. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Notwithstanding anything to the contrary herein, in the event of a conflict between this Section 2.01(b), on the one hand, and the Register or Participant Register provisions of Sections 9.07(c) or (d), on the other hand, such provisions of Sections 9.07(c) or (d), as applicable, shall govern.

Section 2.02 Method of Borrowing.

(a) Notice. The Borrowing shall be made pursuant to a Notice of Borrowing given by Borrower to Administrative Agent not later than 8:00 a.m. (New York City time) on the Business Day of the proposed Borrowing, which shall give to each Lender prompt notice of such proposed Borrowing, by facsimile or by electronic mail. The Notice of Borrowing shall be by facsimile or by electronic mail (with a PDF file of the executed Notice of Borrowing attached), specifying (i) the requested date of such Borrowing (which shall be a Business Day) and (ii) the aggregate amount of such Borrowing. Each Lender shall, before 9:00 a.m. (New York City time) on the date of such Borrowing, make available for the account of its applicable Lending Office to the Administrative Agent at its address referred to in Section 9.09, or such other location as the Administrative Agent may specify by notice to the Lenders, in same day funds, such Lender's Pro Rata Share of such Borrowing. After the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will deposit such funds in the Blocked Account. Until the Availability Date, such funds shall remain in the Blocked Account and the Borrower shall not direct disposition of such funds in the Blocked Account. From and after the Availability Date and so long as no Event of Default has occurred and is continuing or would result therefrom, from time to time the Borrower may direct disposition of available funds in the Blocked Account by written notice to the Administrative Agent not later than 10:00 a.m. (New York City time) at least four (4) Business Days before the proposed disposition, specifying (x) the requested date of such disposition, (y) the amount of funds to be disposed of and (z) the wiring information for such disposition. Within one (1) Business Day of timely receipt of such disposition notice, the Administrative Agent shall deliver written instruction to the depository institution of the Blocked Account directing the disposition of the funds in accordance with the Borrower's notice.

(b) [Reserved].

(c) [Reserved].

(d) Notices Irrevocable. Each Notice of Borrowing delivered by the Borrower hereunder shall be irrevocable and binding on the Borrower.

(e) Funding by Lenders; Administrative Agent Reliance. Unless the Administrative Agent shall have received notice from a Lender, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that such Lender will not make such payment, the Administrative Agent may assume that such Lender has timely made such payment and the Administrative Agent may (and in the case of the initial Borrowing, shall), in reliance upon such assumption, make available a corresponding amount to the Person entitled thereto. If and to the extent that such Lender shall not have so made such payment available to the Administrative Agent, such Lender agrees to immediately repay to the Administrative Agent on demand such corresponding amount, together with interest on such amount, for each day from the date such amount is made available to the applicable Person until the date such amount is repaid to the Administrative Agent, at the lesser of (i) the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank

compensation and (ii) the Maximum Rate. If such Lender shall repay to the Administrative Agent such corresponding amount and interest as provided above, such corresponding amount so repaid shall constitute such Lender's payment required hereunder for purposes of this Agreement even though not made on the day required hereunder.

(f) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the lesser of (i) the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) the Maximum Rate.

Section 2.03 Termination of the Commitments. The Commitments shall terminate on the date of the initial Borrowing.

Section 2.04 Prepayment of Advances.

(a) Optional. The Borrower shall have no right to optionally prepay any principal amount of any Advance except as provided in this Section 2.04(a) and all notices given pursuant to this Section 2.04(a) may be revocable as to the repayment in full of all outstanding Advances which may state that such notice is conditioned upon the effectiveness of other credit facilities or instruments or agreements, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date if such condition is not satisfied). The Borrower may prepay the Advances, after giving by 12:00 p.m. (New York City time) same Business Day prior written notice to the Administrative Agent stating the proposed date and aggregate principal amount of such prepayment. If any such notice is given, the Borrower shall prepay the Advances in whole or ratably in part in an aggregate principal amount equal to the amount specified in such notice, together with accrued and unpaid interest to the date of such prepayment on the principal amount prepaid and amounts if any, required to be paid pursuant to Section 2.08; provided, however, that each partial prepayment shall be made in a minimum amount of \$1,000,000 and in integral multiples of \$500,000 in excess thereof.

(b) Prepayments.

(i) After the Availability Date, if the Borrower receives Net Cash Proceeds from any Disposition or any Casualty Event (other than Dispositions permitted by Section 6.04(c) (other than Casualty Events)) or receives any Tax Credit Transfer Proceeds, the Borrower shall, within 3 Business Days from the date of receipt of such Net Cash Proceeds

or Tax Credit Transfer Proceeds (the “Asset Sale Proceeds Prepayment Date”) (subject to Section 2.04(b)(iv)), offer to prepay (or cause to be prepaid) (an “Asset Sale Prepayment”) the aggregate outstanding principal amount of Advances plus the accrued but unpaid interest thereon to the Asset Sale Proceeds Prepayment Date that may be paid with an amount equal to 100% of such Net Cash Proceeds or Tax Credit Transfer Proceeds.

(ii) If the Borrower incurs Borrowed Debt (excluding (A) intercompany debt of such entities, (B) [reserved], (C) [reserved], (D) purchase money Indebtedness incurred in the ordinary course of business and any replacements or refinancings thereof, and (E) Indebtedness with respect to capital leases incurred in the ordinary course of business and any replacements and refinancings thereof), the Borrower shall, substantially concurrently with the incurrence of such Borrowed Debt (the “Borrowed Debt Prepayment Date”) (subject to Section 2.04(b)(iv)), prepay (or cause to be prepaid) (a “Borrowed Debt Prepayment”) the aggregate outstanding principal amount of Advances plus the accrued but unpaid interest thereon to the Borrowed Debt Proceeds Prepayment Date;

(iii) After the Availability Date, if the Borrower receives Net Cash Proceeds from the issuance of any Equity Interests by any Borrower (other than issuances pursuant to employee stock plans or other benefit or employee incentive arrangements existing from time to time), the Borrower shall, within 3 Business Days from the date of receipt of such Net Cash Proceeds (the “Equity Issuance Proceeds Prepayment Date”) (subject to Section 2.04(b)(iv)), offer to prepay (or cause to be prepaid) (a “Equity Issuance Prepayment”) the aggregate outstanding principal amount of Advances plus the accrued but unpaid interest thereon to the Equity Issuance Proceeds Prepayment Date that may be paid with an amount equal to 100% of such Net Cash Proceeds.

(iv) The Borrower shall notify the Administrative Agent in writing of any prepayment pursuant to clause (i), (ii), or (iii) of this Section 2.04(b) at least 3 Business Days prior to the applicable Prepayment Date (or such shorter time as the Administrative Agent may agree). Each such notice shall specify such Prepayment Date and provide a reasonably detailed calculation of the amount of such proposed prepayment. The Administrative Agent will promptly notify each Lender of the contents of the Borrower’s prepayment notice, and of the amount of such Lender’s Pro Rata Share of the prepayment. Each Lender will have the right to refuse any prepayment pursuant to Section 2.04(b)(i) or 2.04(b)(iii), as applicable, by giving written notice of such refusal to the Administrative Agent within 2 Business Days after such Lender’s receipt of notice from the Administrative Agent of such notice of prepayment (such refused amounts, the “Declined Proceeds”). The Borrower shall make all such prepayments (other than Declined Proceeds) on the applicable Prepayment Date. The Borrower may retain such Declined Proceeds and apply them in a manner not prohibited by this Agreement.

(v) Each prepayment pursuant to this Section 2.04(b) shall be accompanied by accrued and unpaid interest on the amount prepaid to the date of such prepayment and the

amounts required to be paid pursuant to Section 2.08. Each prepayment under this Section 2.04(b) shall be applied to the Advances as determined by the Administrative Agent and agreed to by the Lenders in their sole discretion.

Section 2.05 [Reserved].

Section 2.06 Repayment of Advances. The Borrower shall repay to the Administrative Agent for the ratable benefit of the Lenders the outstanding principal amount of each Advance, together with any accrued and unpaid interest thereon, on the Maturity Date or such earlier date pursuant to Section 7.02.

Section 2.07 Fees. As consideration for the Lenders' commitments and agreements under this Agreement, the Borrower agrees to pay to Jefferies Finance LLC, for its own account, a closing fee of \$1,000,000, which closing fee is due and payable on the Closing Date. On April 5, 2025, the Borrower shall pay to the Administrative Agent, for the accounts of the Lenders, a duration fee in an amount equal to 1.50% of the principal amount of outstanding Advances on such date.

Section 2.08 Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance made by each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(a) Advances. Each Advance shall bear interest at the Applicable Rate in effect from time to time. The Borrower shall pay to Administrative Agent for the ratable account of each Lender all accrued but unpaid interest on such Lender's Advances in arrears on the date such Advance shall be repaid in full.

(b) [Reserved].

(c) Default Rate. Notwithstanding the foregoing, (i) upon the occurrence and during the continuance of an Event of Default under Section 7.01(a) or Section 7.01(e), all overdue Obligations shall bear interest, after as well as before judgment, at the Default Rate and (ii) upon the occurrence and during the continuance of any Event of Default (other than an Event of Default addressed in the foregoing clause (i)), upon the request of the Majority Lenders, all overdue Obligations shall bear interest, after as well as before judgment, at the Default Rate. Interest accrued pursuant to this Section 2.08(c) and all interest accrued but unpaid on or after the Maturity Date shall be due and payable on demand (and if no such demand is made, then due and payable on the otherwise due dates provided herein or if no such due dates are provided herein on the last day of each calendar quarter). Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

Section 2.09 [Reserved].

Section 2.10 [Reserved].

Section 2.11 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (or its applicable Lending Office);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender (or its applicable Lending Office) any other condition, cost or expense (in each case, other than Taxes) affecting this Agreement or Advances made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its applicable Lending Office) or such other Recipient of making or maintaining any loan or of maintaining its obligation to make or accept and purchase any such loan, or to reduce the amount of any sum received or receivable by such Lender (or its applicable Lending Office) or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such other Recipient, the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital/Liquidity Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of financial institutions generally, including such Lender's holding company or any corporation controlling such Lender, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by such Lender to a level below that which such Lender, the corporation controlling such Lender, or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies, the policies of the corporation controlling such Lender, and the policies of such Lender's holding company with respect to capital adequacy), then from time to time within ten Business Days after written demand by such Lender the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender, the corporation controlling such Lender, or such Lender's holding company for any such reduction suffered.

(c) Certificate. Any Lender claiming compensation under this Section 2.11 shall furnish to the Borrower and the Administrative Agent a statement setting forth the additional amount or amounts necessary to compensate such Lender as specified in paragraphs (a) and (b) of this Section 2.11 hereunder which shall be determined by such Lender in good faith and which shall be conclusive in the absence of manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.11 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.11 for any increased costs incurred or reductions suffered more than 270 days prior to the date that such Lender notifies the Borrower and the Administrative Agent of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.12 Payments and Computations.

(a) Payments. Subject to Section 2.13, all payments of principal, interest, and other amounts to be made by the Borrower under this Agreement and other Loan Documents shall be made to the Administrative Agent in Dollars and in immediately available funds, without setoff, deduction, or counterclaim.

(b) Payment Procedures. The Borrower shall make each payment under this Agreement and under the Notes not later than 12:00 p.m. (New York City time) on the day when due in Dollars to the Administrative Agent at the location referred to in the Notes (or such other location as the Administrative Agent shall designate in writing to the Borrower) in same day funds and, as to payments of principal, accompanied by a notice of optional payment from the Borrower, with appropriate insertions and executed by a Responsible Officer of the Borrower. The Administrative Agent will promptly thereafter, and in any event prior to the close of business on the day any timely payment is made, cause to be distributed like funds relating to the payment of principal, interest or fees ratably (other than amounts payable solely to the Administrative Agent or a specific Lender pursuant to Sections 2.11, 2.13, 2.14, and 9.02 and such other provisions herein which expressly provide for payments to a specific Lender, but after taking into account payments effected pursuant to Section 7.04) in accordance with each Lender's applicable pro rata share to the Lenders for the account of their respective applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon receipt of other amounts due solely to the Administrative Agent or a specific Lender, the Administrative Agent shall distribute such amounts to the appropriate party to be applied in accordance with the terms of this Agreement.

(c) Non-Business Day Payments. Whenever any payment shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be.

(d) Computations. Computations of interest shall be made by the Administrative Agent on the basis of a year of 360 days, in each case, for the actual number of days (including the first day, but excluding the last day) occurring in the period for which such interest or fees are payable. Each determination by the Administrative Agent of an amount of interest or fees shall be conclusive and binding for all purposes, absent manifest error.

(e) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Advances or other Obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Advances and accrued but unpaid interest thereon or other such Obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) take an assignment of, or purchase participations in, (in any event, for cash at face value) the Advances and such other Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued but unpaid interest on their respective Advances and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including any payments in connection with Section 2.04(b)), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances to any assignee or participant, other than to the Borrower or any Subsidiary, or any Affiliate of any of the foregoing (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Legal Requirement, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.13 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Legal Requirement. If any applicable Legal Requirement (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Legal Requirement and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding of Indemnified Taxes has been made (including such deductions and withholdings of Indemnified Taxes applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Legal Requirement, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.07 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise

payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.13, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Legal Requirement or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.13(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable: (i) in the case of a Foreign

Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or IRS Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or IRS Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty; (ii) executed copies of IRS Form W-8ECI; (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or IRS Form W-8BEN, as applicable); or (iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or IRS Form W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Legal Requirement as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Legal Requirement to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Legal Requirement and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Legal Requirement (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) On or before the date on which Jefferies Finance LLC (and any successor or replacement Administrative Agent) becomes the Administrative Agent hereunder, it shall deliver to the Borrower two executed copies of either (i) IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding tax, or (ii) IRS Form W-8ECI with respect to any payments to be received on its own behalf and IRS Form W-8IMY (certifying that it is either a "qualified intermediary" within the meaning of Treasury Regulation Section 1.1441-1(e)(5) that has assumed primary withholding obligations under the Code, including Chapters 3 and 4 of the Code, or a "U.S. branch" within the meaning of Treasury Regulation Section 1.1441-1(b)(2)(iv) that is treated as a U.S. person for purposes of withholding obligations under the Code) for the amounts the Administrative Agent receives for the account of others.

Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.13 (including by the payment of additional amounts pursuant to this Section 2.13), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant

to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.13 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.14 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.11, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.13, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.11 or 2.13, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement Lender. If any Lender requests compensation under Section 2.11 or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.13 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.14(a) so as to eliminate such situation, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.07), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.11 or Section 2.13) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) as to assignments required by the Borrower, the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.07, unless such fee has been waived by the Administrative Agent;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its applicable Advances, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued but unpaid interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.13, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with any applicable Legal Requirement; and

(v) with respect to a Non-Consenting Lender, the proposed amendment, modification, waiver, consent or release with respect to this Agreement or any other Loan Document has been approved by the Majority Lenders.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower or the Administrative Agent to require such assignment and delegation cease to apply. Solely for purposes of effecting any assignment involving a Non-Consenting Lender under this Section 2.14 and to the extent permitted under applicable Legal Requirements, each Lender hereby designates and appoints the Administrative Agent as true and lawful agent and attorney-in-fact, with full power and authority, for and on behalf of and in the name of such Lender to execute, acknowledge and deliver the Assignment and Acceptance required hereunder if such Lender is a Non-Consenting Lender and such Lender shall be bound thereby as fully and effectively as if such Lender had personally executed, acknowledged and delivered the same.

Section 2.15 Conversion. The Lenders shall have the right, but not the obligation, in its sole discretion, to convert the Indebtedness existing under this Agreement to the indebtedness contemplated pursuant to the Note Purchase Agreement, as long as the Conditions to Conversion have been satisfied. On the Conversion Date, (a) any Indebtedness hereunder shall be deemed to be replaced with Indebtedness pursuant to and in accordance with the Note Purchase Agreement, and (b) the Obligations hereunder shall be deemed to be replaced with the Obligations under the Note Purchase Agreement.

ARTICLE III CONDITIONS

Section 3.01 Conditions to Closing. The effectiveness of this Agreement is subject to the occurrence of the following conditions precedent:

(a) Documentation. The Administrative Agent and the Collateral Agent shall have received the following duly executed by all the parties thereto, in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Lenders, and, where applicable, in sufficient copies for each Lender:

(i) counterparts of this Agreement, a Note payable to each Lender or its registered assigns in the amount of its Commitment, if requested by such Lender and the Security Agreement, including all attached exhibits and schedules;

(ii) an opinion of the Borrower's counsel dated as of the date of this Agreement;

(iii) copies, certified as of the date of this Agreement by a Responsible Officer of the Borrower of (A) the resolutions of the Board of Directors (or other applicable governing body) of the Borrower approving the Loan Documents to which it is a party, (B) the partnership agreement, articles or certificate of incorporation, or certificate of formation (as applicable) and the limited liability company agreement, operating agreement, partnership agreement or bylaws (as applicable) of the Borrower, and (C) all other documents evidencing other necessary corporate action and necessary and material Governmental Approvals, if any, with respect to the Loan Documents to which the Borrower is a party and the other transactions contemplated hereby;

(iv) certificates of a Responsible Officer of Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the other Loan Documents to which Borrower is a party;

(v) appropriate UCC-1 financing statements covering the Collateral for filing with the appropriate authorities and any other documents, agreements or instruments necessary to create an Acceptable Security Interest in such Collateral;

(vi) [reserved];

(vii) certificates of good standing for the Borrower in each state in which each such Person is organized, which certificate shall be dated a date not sooner than 30 days prior to the date of this Agreement;

(viii) a certificate executed by a Responsible Officer of the Borrower certifying as to the matters set forth in Sections 3.01(f) and (j) below; and

(ix) a funds flow memorandum in form and substance reasonably acceptable to the Administrative Agent.

(b) Payment of Fees. On the date of this Agreement, the Borrower shall have paid the fees required by Section 2.07 and all costs and expenses payable pursuant to Section 9.01(a) to the extent invoices for such fees, costs, and expenses have been presented to the Borrower at least one Business Day prior to the Closing Date (it being understood that this Section 3.01(b) may be satisfied concurrently with the initial funding of Advances under this Agreement).

(c) Financial Information. The Lenders shall have received (it being agreed that availability of the following financial information on the SEC website shall constitute the Lenders' receipt) (i) audited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Sponsor for the fiscal year ending on December 31, 2023, and (ii) unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Sponsor for the fiscal quarter ending on September 30, 2024.

(d) [Reserved].

(e) [Reserved].

(f) Material Adverse Change. Since December 31, 2023, except as set forth on Schedule 3.01 or otherwise disclosed to the Administrative Agent no event or circumstance that has had or could reasonably be expected to cause a Material Adverse Change has occurred.

(g) USA Patriot Act. The Administrative Agent and the Lenders shall have received (at least three (3) Business Days prior to Closing Date to the extent requested at least four (4) Business Days prior to the Closing Date), and be reasonably satisfied in form and substance with, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including, but not restricted to, the Patriot Act.

(h) [Reserved].

(i) [Reserved].

(j) Representations and Warranties. Each of the representations and warranties made by the Borrower in, or pursuant to, the Loan Documents shall be true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) on and as of the Closing Date except to the extent that any such representation or warranty expressly relates solely to an earlier date, in which case it shall have been true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) as of such earlier date.

(k) The Administrative Agent shall have received the results of a recent lien search in the Office of the Secretary of State of the State of Delaware with respect to the Pledgor and the Borrower, and in each other jurisdiction where assets of the Pledgor and the Borrower are located, and such searches shall reveal no Liens on the equity interests of the Borrower or any of the assets of the Borrower, in each case, except for Permitted Liens or Liens discharged prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent.

(l) The Collateral Agent shall have control of the Blocked Account pursuant to a control agreement in form and substance reasonably satisfactory to the Collateral Agent.

Section 3.02 Conditions to Advance. The obligation of each Lender to make its Advance hereunder is subject to the occurrence of the following conditions precedent on or before March 31, 2025:

(a) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing duly executed by the Borrower in accordance with Section 2.02(a).

(b) Representations and Warranties. Each of the representations and warranties made by the Borrower in, or pursuant to, the Loan Documents shall be true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) on and as of the date of such Advance except to the extent that any such representation or warranty expressly relates solely to an earlier date, in which case it shall have been true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) as of such earlier date.

(c) No Default. No Default or Event of Default shall exist or would result from such Advance or from the application of the proceeds thereof.

(d) The Administrative Agent shall have received a solvency certificate dated as of the date of this Agreement from the Chief Financial Officer or Treasurer of the Borrower in substantially the form attached as Exhibit H.

Notwithstanding anything to the contrary in any Loan Document, if the Borrower shall not have met the conditions set forth in this Section 3.02 by 4:30 p.m. (New York City time) on March 31, 2025, this Agreement shall automatically terminate and be of no further force and effect.

Section 3.03 Availability of Advances. The ability of the Borrower to direct disposition of the funds in the Blocked Account pursuant to Section 2.02(a) is subject to the occurrence of the following conditions precedent:

(a) The Administrative Agent and the Collateral Agent shall have received:

(i) a duly executed Guaranty from Sponsor and a pledge agreement from Pledgor with respect to the Equity Interests of the Borrower in form and substance satisfactory to the Collateral Agent (the “Pledge Agreement”);

(ii) copies, certified as of the date of this Agreement by a Responsible Officer of Sponsor and Pledgor of (A) the resolutions of the Board of Directors (or other applicable governing body) of such Person approving the Loan Documents to which it is a party, (B) the partnership agreement, articles or certificate of incorporation, or certificate of formation (as applicable) and the limited liability company agreement, operating agreement, partnership agreement or bylaws (as applicable) of such Person, and (C) all other documents evidencing other necessary corporate action and necessary and material Governmental Approvals, if any, with respect to the Loan Documents to which such Person is a party and the other transactions contemplated hereby;

(b) The Administrative Agent shall have received the Construction Budget and Schedule, the Financial Model and an operating plan and budget for the fiscal year 2025 with respect to the operation and maintenance of the Project, including all anticipated Operating Costs, with allowance for contingencies.

(c) The Administrative Agent shall have received an opinion of the Borrower’s counsel covering the Pledge Agreement, the Guaranty and the amended and restated Security Agreement.

(d) The Collateral Agent shall have received the original executed limited liability company membership interest certificates representing 100% of the limited liability company membership interests in the Borrower pledged pursuant to the Pledge Agreement, together with an undated transfer power for each such membership interest certificate executed in blank by a duly authorized officer of the Pledgor.

(e) The Administrative Agent shall have received copies of the following reports, together with reliance letters in respect of same authorizing the Secured Parties’ reliance on such reports: (i) report of the Independent Engineer; and (ii) report of the Insurance Consultant.

(f) The Administrative Agent shall have received evidence that not less than \$14,300,000 of equity contributions have been used (or are available to the Borrower to be used) to pay costs for the Project.

(g) The Collateral Agent (on behalf of the Secured Parties) shall have received (i) an insurance broker’s certificate from the Borrower’s nationally recognized insurance broker(s), dated on or about the Availability Date, confirming that all Required Insurance is in full force and effect and that all premiums then due thereon have been paid and providing copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer) and (ii) a certificate from the Insurance Consultant, dated on or about the Availability Date, addressed to the Lenders and the Collateral Agent confirming that all insurance required to be maintained by the Borrower pursuant to the terms of this Agreement

and the other Transaction Documents to which it is a party (A) are in full force and effect and (B) all premia due at that time under each relevant insurance have been paid. All property insurance policies are to be made payable to the Collateral Agent for the benefit of the Secured Parties, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard, non-contributory "lender" or "secured party" clause. All certificates of property and general liability insurance are to be delivered to the Collateral Agent, with the lender's loss payable and additional insured endorsements in favor of the Collateral Agent, and the Borrower shall use commercially reasonable efforts to cause the applicable insurance company to provide for not less than thirty (30) days (ten (10) days in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation.

(h) The Collateral Agent shall have received a duly executed amended and restated Security Agreement from the Borrower, providing for a "substantially all assets" lien on the property and assets of the Borrower (excluding Excluded Assets).

(i) The Borrower shall use commercially reasonable efforts to obtain and deliver to the Administrative Agent copies of each fully executed consent or notice, as applicable, set forth in Schedule 3.03 hereto.

(j) The Borrower shall deliver to the Administrative Agent a duly executed PPA Amendment in form and substance reasonably satisfactory to the Administrative Agent, which shall be in full force and effect.

(k) The Borrower shall deliver to the Administrative Agent a copy of the CPUC Approval (as defined in the Power Purchase Agreement) with respect to the Power Purchase Agreement, including the PPA Amendment.

(l) Any Delay Damages (as defined in the Power Purchase Agreement) due and owing by the Borrower to the Power Purchaser under the Power Purchase Agreement shall have been satisfied or waived.

(m) The Initial Delivery Date shall have occurred and the Borrower shall have delivered to the Administrative Agent a copy of the Initial Delivery Date Confirmation Letter (as defined in the Power Purchase Agreement).

(n) The Borrower shall deliver to the Administrative Agent a duly executed Tax Credit Transfer Agreement in form and substance satisfactory to the Administrative Agent, which shall be in full force and effect.

(o) The Borrower shall deliver to the Administrative Agent in respect of the Mortgaged Property:

(i) the fully executed and notarized Mortgage in proper form for recording in the official real property records of Napa County, California (the "Official Records"),

encumbering the Mortgaged Property, which shall be in form and substance satisfactory to Collateral Agent and each Lender;

(ii) an estoppel and consent agreement from the City in satisfaction of the requirements set forth in Section 22c of the Site Lease and dated as of a date that is no more than twenty-five (25) days prior to the date of the Mortgage, which shall be in form and substance satisfactory to Collateral Agent and each Lender;

(iii) an ALTA 2006 Form extended coverage loan policy of title insurance (the "Title Policy") issued by a nationally recognized title company reasonably acceptable to Collateral Agent and the Lenders (the "Title Company") with respect to the Mortgaged Property identified therein, in an amount to be agreed, and otherwise in form and substance reasonably satisfactory to each Lender and the Collateral Agent, containing such endorsements as each Lender and the Collateral Agent may reasonably request, including, but not limited to, endorsements as to access, comprehensive coverage, contiguity, and subdivision, and (x) insuring that the Borrower has good legal and valid title, including leasehold interest and easement interest, in, or right to occupy and use, such Mortgaged Property (and any other real property that is subject to any easement granted for the benefit of the Borrower), free and clear of any Liens or other exceptions to title other than Permitted Liens, (y) containing no exception for the lien rights of mechanics' liens or suppliers, inchoate or otherwise, and (z) insuring such other matters as the Lenders and Collateral Agent may request; and (ii) evidence satisfactory to the Lenders that the Company has paid to the Title Company or to the appropriate Governmental Authority all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the Title Policy and all recording charges payable in connection with recording the Mortgage in the Official Records; and

(iv) the Collateral Agent shall have received ALTA/ACSM form survey of the Mortgaged Property prepared in accordance with the 2021 Minimum Standard Detail Requirements in form and substance reasonably satisfactory to the Majority Lenders showing (i) as to the Mortgaged Property, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and showing the perimeter within which all improvements are located and all encroachments thereon, (ii) the location and dimensions of all improvements, fences or encroachments located in or on the Mortgaged Property, (iii) whether the Mortgaged Property or any portion thereof is located in a special earthquake or flood hazard zone and (iv) that there are no encroachments, easements or other encumbrances affecting the Mortgaged Property, except for Permitted Liens.

(p) The Collateral Agent shall have received (i) a flood hazard certificate evidencing whether the Mortgaged Property is located, in whole or in part, in an area designated by the Federal Emergency Management Agency as a special flood hazard area (a "Flood Hazard Property") and whether the community in which such Mortgaged Property is located is participating in the

National Flood Insurance Program, (ii) for any Flood Hazard Property, the Borrower's written acknowledgment of receipt of written notification as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which such Flood Hazard Property is located is participating in the National Flood Insurance Program and (iii) for any "Buildings" or "Manufactured (Mobile) Homes" (as such terms are defined in Flood Insurance Laws) situated on a Flood Hazard Property which Buildings and/or Manufactured (Mobile) Homes are also located in a special flood hazard area or an area having mud slide hazards, copies of the application for a flood insurance policy of the Borrower plus proof of premium payment, and a declaration page confirming that flood insurance in the amounts required by Flood Insurance Laws has been issued, or such other evidence of such flood insurance reasonably satisfactory to the Majority Lenders and naming the Collateral Agent as sole loss payee on behalf of the Lenders.

(q) The Borrower shall deliver to the Administrative Agent an opinion of Venable LLP, California counsel to the Borrower as to the enforceability of the Mortgage.

(r) The Independent Engineer shall deliver to the Lenders a certificate confirming that the Project has been placed in service for U.S. federal income tax purposes.

(s) The Borrower shall deliver to the Administrative Agent a duly executed contract for a five (5) year supply of Fuel (as defined in the Power Purchase Agreement) required for the Borrower to comply with its obligations under Section 10.1(c)(ix) of the Power Purchase Agreement with Air Products and Chemicals, Inc., Air Liquide, S.A., Linde plc or another gas provider acceptable to the Administrative Agent in its reasonable sole discretion.

(t) Each of the representations and warranties made by the Borrower in, or pursuant to, the Loan Documents shall be true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) on and as of the Availability Date except to the extent that any such representation or warranty expressly relates solely to an earlier date, in which case it shall have been true and correct in all material respects (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) as of such earlier date

ARTICLE IV REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants as follows:

Section 4.01 Existence; Subsidiaries. The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. The Borrower is in good standing and qualified to do business in each other jurisdiction where its ownership or lease of Property or conduct of its business requires such qualification except where such failure to comply could not reasonably be expected to result in a Material Adverse Change. As of the date hereof, the Borrower has no Subsidiaries.

Section 4.02 Power; No Conflicts. The execution and delivery by the Borrower of the Loan Documents to which each such Person is a party, in accordance with their respective terms and the Advances hereunder do not and will not, by the passage of time, the giving of notice or otherwise, (a) violate any Legal Requirement relating to the Borrower (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of the Borrower (c) conflict with, result in a breach of or constitute a default under any material indenture, agreement, or other instrument to which the Borrower is a party or by which any of its properties may be bound, or any Governmental Approval relating to the Borrower or (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrower other than Permitted Liens. The performance by the Borrower of the Loan Documents to which it is a party, in accordance with their respective terms and the transactions contemplated hereby or thereby (other than the Advances) do not and will not, by the passage of time, the giving of notice or otherwise, (a) violate any Legal Requirement relating to the Borrower except where such violation could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of the Borrower, (c) conflict with, result in a breach of or constitute a default under any material indenture, agreement or other instrument to which the Borrower is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person except where such conflict, breach or default could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, or (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrower other than Permitted Liens.

Section 4.03 Authorization and Approvals. No consent, order, authorization, or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required for the due execution, delivery, and performance of the Loan Documents by the Borrower or the consummation of the transactions contemplated hereby or thereby, except for (a) the filing of UCC-1 financing statements in the appropriate state and county filing offices, (b) those consents and approvals that have been obtained or made on or prior to the date hereof and that are in full force and effect, (c) consents, authorizations, filings and notices set forth in Schedule 3.02 and (d) such consents, orders, authorizations, approvals, notices or filings required in connection with the operation of the business of the Borrower the failure to obtain of which could not reasonably be expected to result in a Material Adverse Change.

Section 4.04 Enforceable Obligations. The Loan Documents have been duly executed and delivered by the Borrower. Each Loan Document is the legal, valid, and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by any applicable Debtor Relief Laws.

Section 4.05 Financial Condition and Financial Statements.

(a) The Borrower has delivered to the Administrative Agent and the Lenders financial information delivered pursuant to Section 3.01. All financial statements delivered pursuant to Section 3.01 or Section 5.06 are (or will be when delivered) complete and correct in all material respects and fairly present in all material respects on a consolidated basis the assets, liabilities and financial position of Borrower as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements and the absence of footnotes from unaudited financial statements), in each case, in accordance with GAAP.

(b) Since December 31, 2023, except as set forth on Schedule 3.01 or otherwise disclosed to the Administrative Agent no event or circumstance that has had or could reasonably be expected to cause a Material Adverse Change has occurred.

Section 4.06 True and Complete Disclosure. All factual information (excluding estimates, projections, other projected financial information, forward looking statements and information of a general economic or industry nature) heretofore or contemporaneously furnished by or on behalf of Borrower in writing to any Lender or the Administrative Agent for purposes of or in connection with this Agreement, any other Loan Document or any transaction contemplated hereby or thereby is when taken as a whole and as modified or supplemented by other information so furnished, true and accurate in all material respects on the date as of which such information was or is dated or certified and did not or does not contain, when taken as a whole, any untrue statement of a material fact or omit, when taken as a whole, to state any material fact necessary to make the statements contained therein not misleading in any material respect at such time. All projections, estimates, and pro forma financial information furnished by the Borrower were prepared in good faith on the basis of the assumptions believed in good faith to be reasonable at the time made, which assumptions are believed to be reasonable in light of then existing conditions except that such financial projections and statements shall be subject to normal year end closing and audit adjustments (it being recognized by the Lenders that projections are not to be viewed as facts or a guarantee of future performance, are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control and that the actual results during the period or periods covered by such projections may vary from such projections and such variations may be material).

Section 4.07 Litigation; Compliance with Laws.

(a) There is no pending or, to the knowledge of the Borrower, threatened in writing action or proceeding affecting the Borrower before any court, Governmental Authority or arbitrator which could reasonably be expected to cause a Material Adverse Change other than as set forth in Schedule 4.07 or which purports to affect the legality, validity, binding effect or enforceability of this Agreement or any other Loan Document. There is no pending or, to the knowledge of the Borrower, threatened in writing action or proceeding instituted against the Borrower which seeks to adjudicate the Borrower as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or

composition of it or its debts under any Debtor Relief Law, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its Property.

(b) The Borrower has complied in all respects with all statutes, rules, regulations, orders and restrictions of any Governmental Authority having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property except where such failure to comply could not reasonably be expected to result in a Material Adverse Change.

Section 4.08 Use of Proceeds. The proceeds of the Advances will be used by the Borrower for the purposes described in Section 5.09. The Borrower is not engaged principally or as one of its activities in the business of extending credit for the purpose of “buying” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U). No part of the proceeds of the Advances will be used for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X.

Section 4.09 Investment Company Act. The Borrower is not a “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act of 1940) and the Borrower is not or after giving effect to the Advances will not be, subject to any other applicable Legal Requirement which limits its ability to incur or consummate the transactions contemplated hereby to the extent such limitations are applicable.

Section 4.10 Taxes.

(a) Reports and Payments. All federal income Returns and all other material Returns (as defined below in clause (b) of this Section) required to be filed by or on behalf of the Borrower has been duly filed on a timely basis or appropriate extensions have been obtained and such Returns are and will be true, complete and correct in all material respects; and all material Taxes required to be paid by Borrower that are payable with respect to the periods covered by such Returns or on subsequent assessments with respect thereto or otherwise have been paid in full on a timely basis, except in each case to the extent of Taxes that are being diligently contested in good faith and reserves have been made in accordance with GAAP.

(b) Returns Definition. “Returns” in this Section 4.10 shall mean any U.S. federal, state, or local return, declaration of estimated Tax, or information statement relating to, filed, or required to be filed with a Governmental Authority in connection with, any Taxes, including any information return or report with respect to backup withholding.

Section 4.11 ERISA and Employee Matters. Except for matters that could not reasonably be expected to result in a Material Adverse Change, the Borrower and each ERISA Affiliate have operated and administered all Employee Benefit Plans in compliance with all applicable laws. Neither the Borrower nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to Employee Benefit Plans,

and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Borrower or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Borrower or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to Section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or Section 4068 of ERISA or by the granting of a security interest in connection with the amendment of an Employee Benefit Plan, other than such liabilities or Liens as would not be individually or in the aggregate reasonably be expected to result in a Material Adverse Change. The present value of the aggregate benefit liabilities under each of the Employee Benefit Plans (other than Multiemployer Plans), determined as of the end of such Employee Benefit Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Employee Benefit Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Employee Benefit Plan allocable to such benefit liabilities in an amount that would result in a Material Adverse Change. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in Section 3 of ERISA. The Borrower and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate would result in a Material Adverse Change. The expected postretirement benefit obligation (determined as of the last day of the Borrower's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Borrower would not result in a Material Adverse Change.

Section 4.12 Condition and Maintenance of Property; Casualties. Borrower has good and indefeasible title to its properties or leases that individually or in the aggregate are material or are necessary to construct, operate or maintain the Project, free and clear of all Liens except for Permitted Liens. The material Properties used or to be used in the continuing operations of the Borrower are in good repair, working order and condition, normal wear and tear excepted.

Section 4.13 Compliance with Agreements; No Defaults.

(a) The Borrower is not in default in any material respect under or with respect to any contract, agreement, lease, or other instrument to which the Borrower is a party which is continuing and which, if not cured, could reasonably be expected to result in a Material Adverse Change.

(b) No Event of Default has occurred and is continuing.

Section 4.14 Environmental Condition.

(a) Permits, Etc. As of the Availability Date, the Borrower (i) has obtained all Environmental Permits necessary for the ownership and operation of Properties and the conduct of business (ii) has at all times been and are in compliance with all terms and conditions of such

Permits and with all other requirements of applicable Environmental Laws; (iii) has not received written notice of any violation or alleged violation of any Environmental Law or Permit; and (iv) is not subject to any actual, pending or to the Borrower's knowledge, threatened Environmental Claim; except, in each case above, that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(b) Certain Liabilities. None of the owned or operated Property of the Borrower, (i) has been placed on the National Priorities List, the Comprehensive Environmental Response Compensation Liability Information System list, or their state or local analogs, which, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Change; or (ii) has been the site of any Release of Hazardous Materials from present or past operations which has caused at the site or at any third-party site any condition that, individually or in the aggregate, has resulted in or could reasonably be expected to result in the need for Response that would cause a Material Adverse Change.

(c) Certain Actions. Without limiting the foregoing, to the Borrower's knowledge there are no facts, circumstances, conditions or occurrences with respect to either any Property owned, leased or operated by the Borrower or any business or activity conducted by the Borrower that could reasonably be expected to form the basis of an Environmental Claim under Environmental Laws that could reasonably be expected to result in a Material Adverse Change.

Section 4.15 Permits, Licenses, Etc. Except as set forth on Schedule 4.15, the Borrower owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto required for the operations of the Borrower and the Project, that individually or in the aggregate are Material, without known conflict with the rights of others. The Borrower manages and operates its business in all material respects in accordance with all applicable material Legal Requirements and good industry practices.

Section 4.16 [Reserved].

Section 4.17 [Reserved].

Section 4.18 Restriction on Liens. None of the Collateral is subject to any Lien other than Permitted Liens. The Borrower is not a party to any agreement or arrangement (other than this Agreement and the Security Instruments), or subject to any order, judgment, writ or decree, that either restricts or purports to restrict its ability to grant Liens to secure the Obligations against its Properties that constitute Collateral.

Section 4.19 Solvency. Before and after giving effect to the Advances, the Borrower is Solvent.

Section 4.20 [Reserved].

Section 4.21 Insurance. As of the Availability Date, Borrower has insurance as required under Section 5.02.

Section 4.22 Anti-Corruption Laws; Sanctions; Patriot Act. None of (a) the Borrower or any of its directors, officers, employees or affiliates, or (b) to the knowledge of the Borrower, any agent or representative of the Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, (i) is a Sanctioned Person or currently the subject or target of any Sanctions or (ii) has taken any action, directly or indirectly, that would result in a violation by such Persons of any Anti-Corruption Laws. The Borrower is compliance with Section 5.06(k).

Section 4.23 [Reserved].

Section 4.24 [Reserved].

Section 4.25 Fiscal Year. The fiscal year of Borrower is January 1 through December 31.

Section 4.26 Location of Business and Offices. The Borrower's principal place of business and chief executive office is located at its address specified on Schedule 4.26 or at such other location as it may have, by proper written notice hereunder, advised the Administrative Agent.

Section 4.27 [Reserved].

Section 4.28 Senior Debt Status. The Obligations of the Borrower under this Agreement and each of the other Loan Documents rank and shall continue to rank at least senior in priority of payment to all subordinated Indebtedness and all senior unsecured Indebtedness of the Borrower.

Section 4.29 Security Instruments. The provisions of the Security Instruments are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties an Acceptable Security Interest on all right, title and interest of the Borrower in the Collateral described therein and, upon the filing of UCC financing statements in the applicable offices contemplated by the Security Instruments or the taking of such other actions as are specified in such Security Instruments, such Acceptable Security Interest will be perfected.

Section 4.30 Energy Regulatory Status.

(a) No later than the date the Project injects electric energy onto the Transmission System, the Borrower shall: (1) be a "public utility" under the FPA and shall have received authorization from FERC to sell energy, capacity and ancillary services at market based rates under Section 205 of the FPA ("MBR Authority") and has been granted associated waivers from regulation and blanket authorizations typically granted to sellers of power at market based rates; and (2) have filed a notification of self-certification of EWG status with FERC.

(b) The Pledgor is not subject to, or is exempt from, regulation under the FPA as a “public utility”. The Pledgor is a “holding company” under PUHCA solely with respect to its ownership of an EWG. Neither the Borrower nor the Pledgor is subject to regulation as a “public utility” or an “electrical corporation” or an “electric utility” or any equivalent entity under California laws and regulations governing such entities.

(c) None of the Secured Parties or any Affiliate of such Persons will, solely as a result of the Borrower’s construction, ownership, leasing or operation of the Project, the sale of energy, capacity or ancillary services therefrom as contemplated in the Material Project Documents or the entering into a Material Project Document in respect of such Project, the borrowing of the Advances, the entering into of the Loan Documents by the Borrower or the Pledgor, or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities, except that (i) upon the exercise of certain remedies as provided for under the Loan Documents, a Secured Party or its Affiliate may be subject to regulation under the FPA or PUHCA, unless an exemption or exception applies and (ii) the exercise of any remedy provided for in any Loan Document by a Secured Party or its Affiliate or any of their respective successors or assigns may require prior FERC approval under Section 203 of the FPA.

(d) Other than the receipt by the Borrower of MBR Authority (with associated waivers from regulation and blanket authorizations typically granted to sellers of power at market based rates) from FERC with respect to its future sales of energy and capacity at wholesale, the notice of self certification of EWG status, and filings, consents, orders or approvals that may be required by the Borrower to obtain and maintain its Interconnection Agreement, MBR Authority and associated waivers or authorizations, and EWG status, no filing with or consent, order or approval from FERC or CPUC is required to be made or obtained in order for the Borrower and the Pledgor to enter into the Loan Documents or for the ownership and operation of the Project and the sale of energy, capacity and/or ancillary services therefrom.

Section 4.31 Material Project Documents.

(a) Correct and complete copies of all Material Project Documents have been delivered to each Lender by the Borrower.

(b) Each Material Project Document is an Effective Material Project Document (except such Material Project Document that has been terminated in accordance with its terms).

(c) The rights granted to the Borrower pursuant to the Material Project Documents are sufficient in all material respects to enable the Project to be located, constructed, operated and routinely maintained as contemplated by the Loan Documents and Material Project Documents and provide adequate ingress and egress for any reasonable purpose in connection with the operation and maintenance of the Project.

Section 4.32 Utilities. As of the Availability Date, all utility services necessary for the construction of the Project and the operation of the Project for its intended purpose are available at the Mortgaged Property or will be so available as and when required upon commercially reasonable terms.

ARTICLE V AFFIRMATIVE COVENANTS

So long as any Note or any amount (other than contingent indemnity obligations for which no claim has been made) under any Loan Document shall remain unpaid, the Borrower agrees, unless the Majority Lenders shall otherwise consent in writing, to comply with the following covenants.

Section 5.01 Compliance with Laws, Etc. The Borrower shall comply, in all respects with all applicable Legal Requirements except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. Without limiting the generality and coverage of the foregoing, the Borrower shall comply with all Environmental Laws and all laws, regulations, or directives with respect to equal employment opportunity and employee safety in all jurisdictions in which the Borrower does business except where failure to so comply could not reasonably be expected to individually result in liability in excess of \$2,000,000 and could not reasonably be expected to result in the aggregate in a Material Adverse Change. Without limitation of the foregoing, the Borrower shall maintain and possess all authorizations, Permits, licenses, trademarks, trade names, rights and copyrights which are necessary or advisable to the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

Section 5.02 Maintenance of Insurance. The Borrower shall procure and maintain or shall cause to be procured and maintained continuously in effect policies of insurance issued by companies, associations or organizations reasonably satisfactory to the Administrative Agent and in at least such amounts and covering such casualties, risks, perils, liabilities and other hazards that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Borrower and otherwise reasonably required by the Administrative Agent, including on all material property of the Borrower that is of an insurable character in at least the amounts and against at least such risks (but including in any event property/business interruption and casualty) as are set forth on Schedule 5.02 hereto, to the extent available on commercially reasonable terms (the “Required Insurance”).

Section 5.03 Preservation of Corporate Existence, Etc. The Borrower shall preserve and maintain its corporate, partnership, or limited liability company existence, rights, franchises, and privileges, as applicable, in the jurisdiction of its organization. The Borrower shall qualify and remain qualified, as a foreign corporation, partnership, or limited liability company, as applicable, in each jurisdiction in which qualification is necessary or desirable in view of its business and

operations or the ownership of its Properties except where the failure to be so qualified could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

Section 5.04 Payment of Taxes, Etc. The Borrower shall pay and discharge, before the same shall become delinquent, (a) all material Taxes, assessments, and governmental charges or levies imposed upon it or upon its income, profits, activities or Property, prior to the date on which penalties attach thereto and (b) all lawful claims that are material which, if unpaid, would by Legal Requirement become a Lien upon its Property; provided, however, that the Borrower shall not be required to pay or discharge any such Tax, assessment, charge, levy, or claim which is being diligently contested in good faith and by appropriate proceedings, and with respect to which adequate reserves in conformity with GAAP have been provided.

Section 5.05 Visitation Rights; Periodic Meetings

(a) After the Availability Date, and upon reasonable prior notice, the Borrower shall permit any Lender or any of their respective agents, advisors, or other representatives thereof, acting together, to visit the principal executive office of the Borrower, to discuss the affairs, finances and accounts of the Borrower with any of its officers or directors; provided that, unless an Event of Default has occurred and is continuing, the Borrower shall permit only one such inspection per year and (ii) the Borrower shall not be obligated to reimburse the expenses of any Lender in connection with such inspections.

(b) After the Availability Date, if an Event of Default then exists, and at the expense of Borrower, the Borrower shall permit the Lender of their respective agents, advisors, or other representatives thereof, acting together, to visit the principal executive office or Properties of the Borrower, to examine all their books of account, records, reports or other papers, to make copies and extracts therefrom, and to discuss their affairs, finances and accounts with its officers or director and independent public accounts, all at such times and as often as may be reasonably requested.

Notwithstanding the foregoing, the Borrower shall not be required to disclose to the Administrative Agent or any Lender, or any agents, advisors or other representatives thereof, any written material, (x) the disclosure of which would cause a breach of any confidentiality provision in the written agreement governing such material applicable to such Person, (y) which is the subject of attorney-client privilege or attorney's work product privilege asserted by the applicable Person to prevent the loss of such privilege in connection with such information, or (z) which is a non-financial trade secret or other proprietary information.

Section 5.06 Reporting Requirements. The Borrower shall furnish to the Administrative Agent:

(a) Defaults. As soon as possible and in any event within three Business Days after (i) the occurrence of any Default known to any officer the Borrower which is continuing on the date of such statement, a statement of a Responsible Officer of the Borrower setting forth the details

of such Default and the actions which the Borrower has taken and proposes to take with respect thereto;

(b) Employee Benefits Matters. After the Availability Date, to the extent that it would reasonably be expected to result in a Material Adverse Change, promptly, and in any event within 5 days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Borrower or an ERISA Affiliate proposes to take with respect thereto: (i) with respect to any Employee Benefit Plan, any reportable event, as defined in Section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; (ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, and Employee Benefit Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or (iii) any event, transaction or condition that could result in the incurrence of any liability by the Borrower or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Borrower or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Change.

(c) Environmental Notices. Promptly upon, and in any event no later than 10 days after (or such longer period as the Administrative Agent may agree in its sole discretion), the receipt thereof, or the acquisition of knowledge thereof, by the Borrower, a copy of any form of request, claim, complaint, order, notice, summons or citation received from any Governmental Authority or any other Person, concerning (i) violations or alleged violations of Environmental Laws, which seeks to impose liability or corrective action or other obligations therefore in excess of \$2,000,000 or which could otherwise reasonably be expected to cause a Material Adverse Change, (ii) any action or omission on the part of the Borrower in connection with Hazardous Materials which could reasonably result in the imposition of liability in excess of \$2,000,000 or that could otherwise reasonably be expected to cause a Material Adverse Change or requiring that action be taken to respond to or clean up a Release of Hazardous Materials into the Environment and such action or clean-up could reasonably be expected to exceed \$2,000,000 or could reasonably be expected to cause a Material Adverse Change, including without limitation any information request related to, or notice of, potential responsibility under CERCLA, or (iii) the filing of a Lien in connection with obligations arising under Environmental Laws upon, against or in connection with the Borrower, or any of its Collateral, wherever located, the value of which Lien could reasonably be expected to exceed \$2,000,000;

(d) Other Governmental Notices. Promptly and in any event within 10 days after receipt thereof by the Borrower (or by such later date as the Administrative Agent may agree to in its sole discretion), a copy of any notice, summons, citation, or proceeding seeking to modify

in any material respect, revoke, or suspend any material contract, license, permit or agreement with any Governmental Authority, in each case that could reasonably be expected to result in a Material Adverse Change;

(e) Material Changes. Prompt written notice and in any event within 10 days of any condition or event of which the Borrower has knowledge, which condition or event has resulted or could reasonably be expected to result in a Material Adverse Change;

(f) Disputes, Etc. Prompt written notice of (i) any claims, legal or arbitration proceedings, proceedings before any Governmental Authority, or disputes pending, or to the knowledge of the Borrower threatened in writing, or affecting the Borrower which, if adversely determined, could result in a liability to the Borrower in an amount in excess of \$2,000,000 or that could otherwise result in a cost, expense or loss to the Borrower in excess of \$2,000,000, or any material labor controversy of which the Borrower has knowledge resulting in or reasonably considered to be likely to result in a strike against the Borrower and (ii) any claim, judgment, Lien or other encumbrance (other than a Permitted Lien) affecting the Collateral if the value of the claim, judgment, Lien, or other encumbrance affecting such Property shall exceed \$2,000,000;

(g) Material Project Documents. Promptly and in any event within 5 Business Days after receipt thereof by the Borrower (or by such later date as the Administrative Agent may agree to in its sole discretion), (i) the delivery or receipt of any notice pursuant to any Material Project Document that could reasonably be expected to have a Material Adverse Change, (ii) any termination or material amendment, modification or waiver of any Material Project Document or (iii) any material breach or default under any Material Project Document (such notice to be provided no later than five Business Days after the receipt by the Borrower of any notice of such material breach or default of a Material Project Document by a party thereto); or (iv) any event of force majeure asserted under any Material Project Document which exists for more than 10 consecutive days;

(h) Tax Credit Transfer Documents. Promptly after the Tax Credit Transfer Agreement Signing Date, copies of the Tax Credit Transfer Documents.

(i) Notices Under Other Loan Agreements. Promptly after the furnishing thereof, copies of any material written statement, report or notice furnished to any lender, agent or trustee by the Borrower pursuant to the terms of indenture, loan or credit or other similar agreement, with respect to Indebtedness in excess of \$2,000,000 (other than this Agreement) and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 5.06 or not otherwise publicly filed;

(j) [Reserved].

(k) USA Patriot Act. Promptly, following a request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing

obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act;

(l) Responsible Officers. Promptly thereafter, but only to the extent the Borrower is not otherwise required to disclose such information in a filing with the SEC, written notices to the Administrative Agent of the departure or employment of any chief executive officer, chief financial officers, treasurer, president or other executive officer of the Borrower; and

(m) [Reserved]

(n) Other Information. Such other information respecting the business or Properties, or the condition or operations, financial or otherwise, of the Borrower, as the Administrative Agent may from time to time reasonably request.

Section 5.07 Maintenance of Property. The Borrower shall, maintain their owned, leased or operated material Property in good condition and repair, normal wear and tear excepted, so that the business carried on in connection therewith may be properly conducted in all material respects at all times; provided that this Section 5.07 shall not prevent the Borrower from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business or the Borrower has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

Section 5.08 [Reserved].

Section 5.09 Use of Proceeds. The Borrower shall use the proceeds of the Advances to (a) fund the Blocked Account, (b) from and after the Availability Date, (i) pay costs of the Project and (ii) for working capital and other general corporate purposes of the Borrower (other than for any Investment or Restricted Payment) and (c) to pay the fees, costs and expenses incurred in connection with the Loan Documents and the other transactions contemplated hereby and thereby.

Section 5.10 [Reserved].

Section 5.11 Further Assurances.

(a) The Borrower hereby authorizes the Administrative Agent to file any financing statements without the signature of the Borrower to the extent permitted by applicable Legal Requirement in order to perfect or maintain the perfection of any security interest granted under any of the Loan Documents. The Borrower at its expense will promptly execute and deliver to the Administrative Agent upon its reasonable request all such other documents, agreements and instruments to comply with or accomplish the covenants and agreements in the Security Instruments and this Agreement, or to further evidence and more fully describe the collateral intended as security for the Obligations, or to correct any omissions in the Security Instruments, or to state more fully the security obligations set out herein or in any of the Security Instruments, or

to perfect, protect or preserve any Liens created pursuant to any of the Security Instruments, or to make any recordings, to file any notices or obtain any consents, all as may be necessary or appropriate in connection therewith or to enable the Administrative Agent to exercise and enforce its rights and remedies with respect to any Collateral.

(b) After the Availability Date, with respect to any fee or leasehold interest in any real property having a value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing Date by the Borrower, the Borrower shall promptly (i) execute and deliver a mortgage or deed of trust, as applicable, (or an amendment to the existing Mortgage) in favor of the Collateral Agent, for the benefit of the Secured Parties, covering such real property and (ii) if requested by the Collateral Agent (acting at the direction of the Majority Lenders), deliver to the Secured Parties title insurance, surveys, consents, estoppels and legal opinions with respect to such after acquired property in form and scope substantially reasonably satisfactory to the Majority Lenders with respect to the Mortgage or the Mortgaged Properties.

Section 5.12 Post-Closing Obligation. By 4:30 p.m. (New York City time) on April 1, 2025, the Borrower shall have filed its Form 10-K for the 2024 fiscal year with the SEC, which shall include the consolidated balance sheet of Sponsor and its subsidiaries as at the end of the fiscal year ending December 31, 2024, and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year (the "2024 Financials"), all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of BDO USA, P.C., which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern", "material weakness" or like qualification or exception or any qualification or exception as to the scope of such audit.

Section 5.13 Anti-Corruption Laws; Sanctions. The Borrower shall, maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.14 Environmental Matters. The Borrower shall, establish and implement commercially reasonable measures as may be reasonably necessary to ensure that, except as could not reasonably be expected to have a Material Adverse Change: (a) all Property of the Borrower and the operations conducted thereon and other activities of the Borrower is in compliance with applicable Environmental Laws, (b) all Hazardous Materials or solid wastes generated in connection with their operations are disposed of or otherwise handled in compliance with applicable Environmental Laws, (c) no Hazardous Materials will be Released on, at or from any of their owned or leased Property, other than permitted Releases and Releases in a quantity which does not either require reporting or result in imposition of liability under CERCLA or other applicable Environmental Law, and (d) no Hazardous Materials or solid wastes are Released on, at or from any such Property so as to pose an imminent and substantial endangerment to public health, safety or welfare or the Environment.

ARTICLE VI NEGATIVE COVENANTS

So long as any Obligations (other than contingent indemnity obligations for which no claim has been made) under any Loan Document shall remain unpaid, the Borrower agrees, unless the Majority Lenders otherwise consent in writing, to comply with the following covenants.

Section 6.01 Liens, Etc. The Borrower shall not create, assume, incur, or suffer to exist, any Lien on or in respect of any of its Property (including any right to receive income) whether now owned or hereafter acquired, except that the Borrower may create, incur, assume, or suffer to exist:

- (a) Liens granted pursuant to the Security Instruments and securing the Obligations;
- (b) Liens on equipment, fixtures and other personal Property securing Indebtedness permitted under Section 6.02(c); provided that (i) such Liens shall be created substantially simultaneously with the acquisition, repair, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed 100% of the original price for the purchase, repair improvement or lease amount (as applicable) of such Property at the time of purchase, repair, improvement or lease (as applicable) together with any financing for interest thereon;
- (c) Liens for Taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet delinquent or as to which the period of grace (not to exceed 90 days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;
- (d) the claims of materialmen, mechanics, carriers, warehousemen, processors, repairmen, suppliers, workers, or landlords for labor, materials, supplies, rentals or other like claims incurred in the ordinary course of business, which (i) are not overdue for a period of more than the longer of 90 days or the grace period therefor, or if overdue for more than such period, no action has been taken to enforce such Liens, (ii) to the extent overdue, such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP or (iii) do not, individually or in the aggregate, materially impair the use thereof in the operation of the business of the Borrower;
- (e) royalties, overriding royalties, net profits interests, production payments, reversionary interests, calls on production, preferential purchase rights and other burdens on or deductions from the proceeds of production, that do not secure Indebtedness and that are taken into account in computing the net revenue interests and working interests of the Borrower;

(f) deposits or pledges of cash or cash equivalents made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, old age pension or public liability obligations, statutory obligations, regulatory obligations, surety and appeal bonds (other than bonds related to judgments or litigation), government contracts, performance and return of money bonds, and bids and other obligations of a like nature incurred in the ordinary course of business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(g) [Reserved];

(h) [Reserved];

(i) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to Operating Leases entered into in the ordinary course of business of the Borrower;

(j) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any Deposit Account of the Borrower;

(k) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower or materially detract from the value of the relevant assets of the Borrower or (ii) secure any Indebtedness;

(l) Liens securing judgments for the payment of money not constituting an Event of Default;

(m) [Reserved];

(n) licenses of intellectual property, none of which, in the aggregate, interfere in any material respect with the business of the Borrower or materially detract from the value of the relevant assets of the Borrower;

(o) Liens on cash or cash equivalents in favor of any commercial bank to secure any and all obligations of the Borrower, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with (i) commercial credit cards, (ii) stored value cards and (iii) any other Treasury Management Arrangement (including, without limitation, controlled disbursement, purchase card arrangements, automated clearinghouse transactions, return items, overdrafts and interstate depository network services);

(p) [Reserved]

(q) Liens securing obligations under Hedge Contracts entered into in compliance with Section 6.15

(r) servitudes, easements, rights-of-way, restrictions, encroachments, overlapping of improvements, strips, gores, gaps or breaks in contiguity, minor defects or irregularities in title and such other encumbrances or charges against real property or interests therein as of a similar nature which do not in any material way interfere with the value or use thereof for the Borrower's business;

(s) the terms and provisions of any Material Project Document; and

(t) as set forth on Schedule PL.

Section 6.02 Indebtedness, Guarantees, and Other Obligations. The Borrower shall not, create, assume, suffer to exist, or in any manner become or be liable in respect of, any Indebtedness except:

(a) the Obligations;

(b) trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of the Borrower's business operation so long as such trade accounts payable are payable within 60 days of the date the respective goods are delivered or the respective services are rendered and are not more than 60 days past due;

(c) [reserved];

(d) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, self-insurance obligations, and bankers' acceptances, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing;

(e) [reserved];

(f) Indebtedness incurred by the Borrower arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument inadvertently drawn against insufficient funds in the ordinary course of business, so long as such indebtedness is covered within 5 Business Days;

(g) Indebtedness under Hedge Contracts entered into in compliance with Section 6.15;

(h) endorsements of negotiable instruments for collection in the ordinary course of business;

(i) Indebtedness incurred in the ordinary course of business in connection with cash pooling arrangements, cash management, including any Treasury Management Arrangement and other similar arrangements consisting of netting arrangements and overdraft protections incurred in the ordinary course of business and not in excess of \$1,000,000 in the aggregate at any time outstanding;

(j) Indebtedness consisting of obligations arising in the ordinary course of business;

(k) any Indebtedness pursuant to, including contingent obligations arising from indemnities provided under, the Loan Documents and the Material Project Documents;

(l) Permitted Refinancing Debt incurred in exchange for or proceeds of which are used to extend, refinance, renew, replace, defease, discharge, refund, or otherwise retire for value, in whole or in part, any Indebtedness otherwise permitted by this Section 6.02;

(m) [reserved];

(n) [reserved]; and

(o) Indebtedness consisting of guarantees, indemnification obligations, adjustments of purchase prices or similar obligations provided in the ordinary course of business, including guarantees of any of the foregoing clauses.

Section 6.03 Agreements Restricting Liens and Distributions. The Borrower shall not, create, incur, assume or permit to exist any contract, agreement or understanding which in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of the Collateral, in favor of the Collateral Agent to secure the Obligations; provided, that the foregoing shall not apply to: (a) restrictions in this Agreement or any other Loan Document, (b) [reserved], (c) customary restrictions imposed on the granting, conveying, creation or imposition of any Lien on any Property of the Borrower imposed by any contract, agreement or understanding related to the Indebtedness permitted pursuant to Section 6.02, (d) customary restrictions and conditions with respect to the sale or disposition of Property or Equity Interests permitted hereunder pending the consummation of such sale or disposition, (e) customary restrictions imposed on the granting, conveying, creation or imposition of any Lien found in any lease, license or similar contract as they affect any Property or Lien subject to such lease, license or contract, (f) customary prohibitions on assignment of rights contained in software license agreements, (g) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower, and (h) prohibitions or restrictions in joint venture agreements or agreements entered into in connection with joint ventures with respect to the transfer of, or the making of dividends or distributions with respect to, Equity Interests in any joint venture, or with respect to the transfer of or other encumbrance with respect to Property that is the subject of any joint venture or agreements entered into in connection therewith.

Section 6.04 Merger or Consolidation; Asset Sales. The Borrower shall not

- (a) dissolve;
- (b) merge or consolidate with or into any other Person;
- (c) Dispose of any property that is material to the Project as determined by the Administrative Agent:
 - (i) the sale of inventory, the use of cash, and the liquidation of Liquid Investments, in each case, in the ordinary course of business;
 - (ii) the Disposition of equipment that is (A) obsolete or worn out and Disposed of in the ordinary course of business, (B) no longer necessary for the business of such Person or (C) contemporaneously replaced by equipment of at least comparable value and use;
 - (iii) [reserved];
 - (iv) [reserved];
 - (v) Casualty Events and Dispositions constituting Liens permitted under Section 6.01, Restricted Payments permitted under Section 6.05 and Investments permitted under Section 6.06;
 - (vi) licenses of intellectual property, none of which, in the aggregate, materially impair the operation of the business of the Borrower; and
 - (vii) the abandonment of intellectual property that is no longer material to the operation of the business of the Borrower.

Section 6.05 Restricted Payments. The Borrower shall not make any Restricted Payments other than:

- (a) [Reserved];
- (b) Solely after the Availability Date, Permitted Tax Distributions;
- (c) the Borrower may, so long as no Event of Default has occurred and is continuing, purchase the Equity Interests of the Borrower owned by future, present or former officers, directors, employees or consultants of the Borrower or make payments to employees of the Borrower upon termination of employment in connection with the exercise of stock options, stock appreciation rights or similar equity incentives or equity-based incentives pursuant to management incentive plans or other similar agreements or in connection with the death or disability of such employees, in an aggregate amount not to exceed \$2,000,000 in any calendar year; provided, that the cancellation of Indebtedness owed to the Borrower by any future, present or former member

of management, director, employee or consultant of the Borrower, and borrowed to finance such person's non-cash purchase of the Equity Interests of the Borrower, which cancellation serves as consideration for the repurchase from any such person of such Equity Interests, will not be deemed to constitute a Restricted Payment for purposes of this Section 6.05 or any other provision of this Agreement;

(d) repurchases of Equity Interests in the Borrower deemed to occur upon exercise of stock options or warrants or similar rights if such Equity Interests represents a portion of the exercise price of such options or warrants or similar rights shall be permitted (as long as the Borrower makes no payment in connection therewith that is not otherwise permitted hereunder); or

(e) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Equity Interests made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Equity Interests of the Borrower or a substantially concurrent contribution to the equity of the Borrower, in each case, occurring after the date of this Agreement.

Section 6.06 Investments. The Borrower shall not, , make or permit to exist any Investments or purchase or commit to purchase any Equity Interests or other securities or evidences of indebtedness of or interests in any Person, except:

(a) Liquid Investments;

(b) trade and customer accounts receivable arising in the ordinary course of business;

(c) [reserved];

(d) [reserved];

(e) Investments consisting of any deferred portion of the sales price received by the Borrower or any other Investment received as consideration in connection with any sale of assets permitted hereunder;

(f) [reserved];

(g) Hedge Contracts to the extent permitted under Section 6.15;

(h) [reserved];

(i) Investments existing as of the Closing Date and specified in Schedule 6.06;

(j) Investments not otherwise permitted under this Section 6.06 so long as the aggregate amount of the Investments permitted under this clause (j) shall not exceed \$5,000,000;

(k) [reserved]; and

(l) Investments received in consideration of Dispositions of Property permitted under Section 6.04.

Notwithstanding the foregoing, the Borrower shall not create, form or acquire any Subsidiary (of any percentage of legal, beneficial or record ownership) or enter into any partnership or joint venture.

Section 6.07 [Reserved]

Section 6.08 Affiliate Transactions. The Borrower shall not, directly or indirectly, enter into or permit to exist any transaction or series of transactions (including, but not limited to, the purchase, sale, lease or exchange of Property, the making of any Investment, the giving of any guaranty, the assumption of any obligation or the rendering of any service) with any of their Affiliates (each, an “Affiliate Transaction”), unless the Affiliate Transaction is on terms that are no less favorable (taken as a whole) to the Borrower than those that could have been obtained in a comparable arm’s length transaction with a Person that is not such an Affiliate or, if in the good faith judgment of the Borrower, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower from a financial point of view; provided, however, the foregoing provisions of this Section 6.08 shall not apply to:

(a) as set forth on Schedule 6.08;

(b) the performance of employment, equity award, equity option or equity appreciation agreements, plans or other similar compensation or benefit plans or arrangements (including vacation plans, health and insurance plans, deferred compensation plans and retirement or savings plans) entered into by the Borrower in the ordinary course of its business with its or for the benefit of its employees, officers and directors;

(c) fees and compensation to, and indemnity provided on behalf of, officers, directors, and employees of the Borrower in its capacity as such, to the extent such fees and compensation are customary;

(d) Restricted Payments permitted hereunder;

(e) any issuance of Equity Interests (other than Disqualified Equity Interests) to the Borrower; and any transactions with the Borrower effected pursuant to the terms of the Loan Documents;

- (f) [reserved];
- (g) [reserved];
- (h) [reserved]; and

(i) transactions in which the Borrower delivers to the Administrative Agent a letter from an independent accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Borrower from a financial point of view or meets the requirements of the first paragraph of this Section 6.08.

Section 6.09 Compliance with ERISA. To the extent it could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change, the Borrower shall not directly or indirectly (a) engage in any transaction in connection with which any Loan Party or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to section 502(c), (i) or (l) of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code; (b) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could result in any liability to any Loan Party or any ERISA Affiliate to the PBGC; (c) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or applicable law, any Loan Party or any ERISA Affiliate is required to pay as contributions thereto; (d) permit to exist, or allow any ERISA Affiliate to permit to exist, any unpaid minimum required contribution within the meaning of Sections 302 and 303 of ERISA or Sections 412 and 430 of the Code, whether or not waived, with respect to any Pension Plan; or (e) incur, or permit any ERISA Affiliate to incur, a liability to or on account of an Employee Benefit Plan under sections 515, 4062, 4063, 4064, 4201 or 4204 of ERISA.

Section 6.10 Sale and Leaseback. The Borrower shall not sell or transfer to a Person any Property, whether now owned or hereafter acquired, if at the time or thereafter shall lease as lessee such Property or any part thereof or other Property which the Borrower thereof intends to use for substantially the same purpose as the Property sold or transferred.

Section 6.11 Change of Business; Foreign Operations. The Borrower shall not (a) materially change the character of its business, taken as a whole, from the business in which the Borrower is engaged on the Closing Date or (b) operate any business in any jurisdiction other than the United States (but not the offshore federal waters of the United States).

Section 6.12 Name Change. The Borrower shall not, amend its name or change its jurisdiction of incorporation, organization or formation without (a) providing written notice to the Administrative Agent no later than five (5) Business Days after such change and (b) taking all actions reasonably required by the Administrative Agent or the Collateral Agent to maintain an Acceptable Security Interest in all of the Collateral.

Section 6.13 Use of Proceeds.

(a) The Borrower shall not, permit the proceeds of any Advance to be used for any purpose other than those permitted by Section 5.09. The Borrower shall not engage in the business of extending credit for the purpose of “buying” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U). Neither the Borrower, nor any Person acting on behalf of the Borrower has taken or shall take, any action which might cause any Commitments or Advances hereunder to violate Regulation T, U or X or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect, including without limitation, the use of the proceeds of any Advance in any manner that would be in violation of or inconsistent with Regulation T, U or X.

(b) The Borrower shall not request any Advance, and the Borrower shall not use, its directors, officers, employees and agents shall not use, directly or indirectly, the proceeds of any Advance (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.14 [Reserved].

Section 6.15 Hedging Limitations. The Borrower shall not enter into any Hedge Contract (or any trade or transaction thereunder) except for the Hedge Contracts entered into in the ordinary course of business and not for speculative purposes.

Section 6.16 Fiscal Year; Fiscal Quarter. The Borrower shall not, change its fiscal year or any of its fiscal quarters without 5 Business Days notice to the Administrative Agent.

Section 6.17 [Reserved].

Section 6.18 [Reserved]. [Reserved].

Section 6.20 Environmental Matters. The Borrower shall not, cause or permit any of its Property to be in violation of, or cause or permit a Release of Hazardous Materials which will subject Borrower, or any such Property to any liability or Response or remedial obligations required under, any Environmental Laws where such violations or Response or remedial obligations could in the aggregate reasonably be expected to result in a Material Adverse Change.

Section 6.21 [Reserved].

Section 6.22 [Reserved]

Section 6.23 Limitation on Amendments to the Material Project Documents, Organizational Documents and Tax Credit Transfer Documents.

(a) The Borrower shall not amend or otherwise modify, in any material or adverse respect, or grant any material or adverse waiver or consent under, any Material Project Document without the consent of the Majority Lenders (in consultation with the Independent Engineer), other than the PPA Amendment.

(b) The Borrower shall not amend, supplement or otherwise modify (pursuant to a waiver or otherwise) its organizational documents, including the separateness provisions thereof, or permit or suffer to exist any amendment or modification of any of its organizational documents unless any such amendment or modification (1) does not adversely affect any material rights or remedies of any of the parties under any Material Project Document and (2) could not otherwise reasonably be expected to have a Material Adverse Change.

(c) The Borrower shall not amend or otherwise modify, in any material or adverse respect, or grant any material or adverse waiver or consent under, any Tax Credit Transfer Document without the consent of the Majority Lenders.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.01 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default” under any Loan Document:

(a) Payment. The Borrower shall (i) fail to pay when due any principal payable hereunder or (ii) fail to pay, within 5 Business Days of when due, any interest or other amounts (including fees, reimbursements, and indemnifications) payable hereunder, under the Notes, or under any other Loan Document;

(b) Representation and Warranties. Any representation or warranty made or deemed to be made by the Borrower thereof (or any of its officers) in this Agreement or in any other Loan Document shall prove to have been incorrect in any material respect (unless already qualified by materiality or Material Adverse Change in the text thereof, in which case, such representations and warranties shall be true and correct in all respects) when made or deemed to be made; provided that, (i) if the fact, event or circumstance resulting in such false or incorrect representation or warranty is capable of being cured, corrected or otherwise remedied, (ii) such fact, event or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected or otherwise remedied within 30 days from the date on which the Borrower first obtains knowledge thereof and (iii) such representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Change during the pendency of such cure period, then such false or incorrect representation or warranty shall not constitute an Event of Default hereunder;

(c) Covenant Breaches. The Borrower shall fail to (i) perform or observe any covenant contained in Section 5.03 (solely with respect to the Borrower’s existence), Section 5.09, Section 5.12 or Article VI of this Agreement or (ii) fail to perform or observe any other term or covenant

set forth in this Agreement or in any other Loan Document which is not covered by clause (i) above if such failure shall remain unremedied for 30 days after the earlier to occur of (x) the date on which the Borrower thereof obtains knowledge of such breach or failure and (y) the date on which the Administrative Agent notifies the Borrower of the occurrence of such breach or failure;

(d) Cross-Default. (i) The Borrower shall fail to pay any principal of or premium or interest on its Indebtedness that is outstanding in a principal amount of at least \$2,000,000 individually or when aggregated with all such Indebtedness of the Borrower so in default when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to Indebtedness (including, without limitation, any event of default or termination event under any Hedge Contract) that is outstanding in a principal amount (or termination payment amount or similar amount) of at least \$2,000,000 individually or when aggregated with all such Indebtedness of the Borrower so in default, and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or (iii) any such Indebtedness in a principal amount of at least \$2,000,000 individually or when aggregated with all such Indebtedness of the Borrower shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment or as a result of a Disposition permitted by this Agreement), prior to the stated maturity thereof; provided that, for purposes of this subsection 7.01(d), the "principal amount" of the obligations in respect of any Hedge Contract at any time shall be Hedge Termination Value thereof;

(e) Insolvency. The Borrower, Sponsor or Pledgor shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower, Sponsor or Pledgor seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its Property and, in the case of any such proceeding instituted against the Borrower, Sponsor or Pledgor either such proceeding shall remain undismissed for a period of 60 days or any of the actions sought in such proceeding shall occur; or the Borrower, Sponsor or Pledgor shall take any corporate, limited liability company, or partnership, as applicable, action to authorize any of the actions set forth above in this paragraph (e);

(f) Judgments. Any judgment or order for the payment of money in excess of \$2,000,000 shall be rendered against the Borrower (to the extent not paid or covered by insurance) and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 60 consecutive days during which such

judgment or order shall not be vacated, discharged or bonded or a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(g) Employee Benefits Matters. If (i) the Borrower shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to Employee Benefit Plans or (ii) the Borrower establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Borrower thereunder; and any such event or events described in clauses (i) or (ii) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Change.

(h) Change in Control. A Change in Control shall have occurred;

(i) Loan Documents. Any material provision of any Loan Document shall for any reason cease to be in full force and effect or valid, binding, or enforceable (other than in accordance with its terms) on the Borrower or any such Person shall so state in writing;

(j) Security Instruments. (i) The Collateral Agent shall fail to have an Acceptable Security Interest in a material portion of the Collateral to the extent required by Section 5.08, or (ii) any Security Instrument shall, at any time and for any reason, cease to create the Lien on the Property purported to be subject to such agreement, and such Property constitutes a material portion of the Collateral, in accordance with the terms of such agreement, or shall cease to be in full force and effect, or shall be contested by the Borrower or any Guarantor;

(k) Permits. Any Applicable Permit necessary for the construction or operation of any Project shall be modified in an adverse manner, revoked, suspended, terminated, non renewed, or cancelled by the issuing agency or other Governmental Authority having jurisdiction or the Borrower shall fail to obtain, renew, maintain or comply in all respects with any Applicable Permit, as applicable, if such event, together with all such other events, could reasonably be expected to result in a Material Adverse Change provided that an Event of Default with respect to an Applicable Permit shall not be deemed to have occurred if such Applicable Permit has been renewed, issued or replaced within thirty (30) days of the occurrence of a Default under this Section by a replacement Applicable Permit in form and substance reasonably acceptable to the Majority Lenders, so long as no Material Adverse Change shall have occurred during such 30 day period; provided, further, that so long as the Borrower is proceeding with all requisite diligence and in good faith to obtain such replacement Applicable Permit, then such 30-day period shall be extended to such date, not to exceed a total of 15 days after the end of the initial 30-day period (for a total of forty five (45) days), as shall be necessary for the Borrower to obtain such replacement Applicable Permit; provided, further, that so long as the Borrower has applied for and is diligently pursuing renewal of the Applicable Permit in good faith and is operating under an existing version of the same Applicable Permit, whether active or expired, for the duration that the renewal application is pending before the relevant Governmental Authority pursuant to any permit shield provisions available under applicable Environmental Laws, then such 30-day period or 45-day

period, as applicable, shall be extended to the full duration allowed under any such applicable permit shield provisions;

(l) The Borrower or any other party thereto shall breach or be in default under any material term, condition, provision, covenant, representation or warranty contained in any Material Project Document (including, for the avoidance of doubt, warranty obligations) and the effect of such breach or default could be reasonably expected to have a Material Adverse Change on the Borrower or the relevant Project and any applicable grace or cure period with respect to such breach or default under such Material Project Document has expired; or

(m) (1) The Power Purchaser or, prior to the Substantial Completion Date (as such term is defined in the EPC Contract) with respect to the EPC Contract, the EPC Contractor shall have suffered a continuing Bankruptcy Event; provided that such Event of Default shall not be deemed to have occurred if the Borrower has replaced the applicable Material Project Document with any such Person within forty-five (45) days of the occurrence of the Bankruptcy Event, with an Additional Project Document or other agreement that is in form and substance reasonably acceptable to the Majority Lenders (such acceptance not to be unreasonably withheld or delayed); or

(n) Any Material Project Document shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default thereunder; provided that such Event of Default shall not be deemed to have occurred if such Material Project Document, within thirty (30) days of such termination, has been replaced with an Additional Project Document; or

(o) an Event of Abandonment has occurred;

(p) an Event of Taking has occurred with respect to a material portion of the Borrower's property and such Event of Taking could reasonably be expected to result in a Material Adverse Change;

(q) the Project shall not have achieved Substantial Completion (as defined in the EPC Contract) by September 1, 2025; or

(r) The report and opinion of BDO USA, P.C., with respect to the 2024 Financials shall be subject to a "going concern", "material weakness" or like qualification or exception.

Section 7.02 Remedies upon Default. If any Event of Default (other than an Event of Default described in Section 7.01(e)) exists, the Administrative Agent and/or the Collateral Agent, as applicable, may (with the consent of the Majority Lenders) and shall (upon written direction of Majority Lenders) do any one or more of the following from time to time:

(a) declare any Obligations immediately due and payable (an “acceleration”), whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrower to the fullest extent permitted by law;

(b) if an Event of Default described in Section 7.01(e) occurs and is continuing, any Obligations will become immediately due and payable without any further action or notice on the part of the Administrative Agent or any Lenders; and

(c) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrower to assemble Collateral, at the Borrower’s expense, and make it available to the Collateral Agent at a place designated by the Collateral Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by the Borrower, the Borrower agrees not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by applicable Legal Requirement, in lots or in bulk, at such locations, all as the Collateral Agent, in its discretion, deems advisable. The Borrower agrees that 10 days’ notice of any proposed sale or other disposition of Collateral by Collateral Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of intellectual property shall be commercially reasonable. Collateral Agent may conduct sales on the Borrower’s premises, without charge, and any sale may be adjourned from time to time in accordance with applicable Legal Requirements. Each of the Administrative Agent and the Collateral Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and each of the Administrative Agent and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

Section 7.03 [Reserved].

Section 7.04 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, the Collateral Agent, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Legal Requirement, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Administrative Agent, the Collateral Agent, such Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document and owing to the Administrative Agent, such Lender, the Collateral Agent or such Affiliate, irrespective of whether or not the Administrative Agent, such Lender, the Collateral Agent or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of

the Administrative Agent, such Lender, the Collateral Agent or such Affiliate different from the branch or office holding such deposit or obligated on such obligations. Each of the Lender Parties agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, each Lender, the Collateral Agent and their respective Affiliates under this Section 7.04 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, such Lender, the Collateral Agent or their respective Affiliates may have.

Section 7.05 Non-exclusivity of Remedies. No right, power, or remedy conferred to any Lender Party in this Agreement or the Loan Documents, or now or hereafter existing at law, in equity, by statute, or otherwise shall be exclusive, and each such right, power, or remedy shall to the full extent permitted by law be cumulative and in addition to every other such right, power or remedy. No course of dealing and no delay in exercising any right, power, or remedy conferred to any Lender Party in this Agreement and the Loan Documents or now or hereafter existing at law, in equity, by statute, or otherwise shall operate as a waiver of or otherwise prejudice any such right, power, or remedy. Any Lender Party may cure any Event of Default without waiving the Event of Default. No notice to or demand upon the Borrower shall entitle the Borrower to similar notices or demands in the future.

Section 7.06 Application of Proceeds.

(a) Prior to an Event of Default, all payments made hereunder shall be applied by the Administrative Agent as directed by the Borrower, but subject to the terms of this Agreement, including the application of prepayments according to Section 2.04 and Section 2.12. From and during the continuance of any Event of Default, any monies or Property actually received by the Administrative Agent pursuant to this Agreement or any other Loan Document (other than as a result of the exercise of any rights or remedies under any Security Instrument or any other agreement with the Borrower which secures any of the Obligations), shall be applied as determined by the Administrative Agent, but subject to the terms of this Agreement, including the application of prepayments according to Section 2.04 and Section 2.12.

(b) Notwithstanding the foregoing, in the event that the Obligations have been accelerated pursuant to Section 7.02 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or in any other Loan Document, all monies or Property actually received by the Administrative Agent pursuant to this Agreement or any other Loan Document as a result of the exercise of any rights or remedies under any Security Instrument or any other agreement with the Borrower which secures any of the Obligations, shall be applied in accordance with Section 2.12 and otherwise in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such and the Collateral Agent in its capacity as such, ratably among the Administrative Agent

and Collateral Agent in proportion to the respective amounts described in this clause First payable to them;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Advances, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Advances and all other payment obligations constituting Obligations (other than Obligations entitled to priority under clauses First, Second and Third clauses above), ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Legal Requirements.

ARTICLE VIII THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 8.01 Appointment and Authority. Each Lender hereby irrevocably (a) appoints Jefferies Finance LLC to act on its behalf as the Administrative Agent and the Collateral Agent hereunder and under the other Loan Documents, and (b) authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and/or the Collateral Agent, as applicable, by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Lender Parties, and the Borrower shall not have rights as a third party beneficiary of any of such provisions, other than the rights expressly provided to the Borrower under Section 8.06(a) and Section 8.11(b). It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any other similar term) with reference to the Administrative Agent and/or the Collateral Agent, as applicable, is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Legal Requirement. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 8.02 Rights as a Lender. The Person serving as the Administrative Agent or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent or Collateral Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated

or unless the context otherwise requires, include the Person serving as the Administrative Agent or Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any other Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent or Collateral Agent hereunder and without any duty to account therefor to the Lenders. Jefferies Finance LLC (and any successor acting as Administrative Agent) and its Affiliates may accept fees and other consideration from the Borrower or any Affiliate of the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 8.03 Exculpatory Provisions. Each of the Administrative Agent and the Collateral Agent (which terms as used in this Section 8.03 shall include each of their Related Parties) shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, each of the Administrative Agent and the Collateral Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or Collateral Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders or Secured Parties as shall be expressly provided for herein or in the other Loan Documents), provided that neither the Administrative Agent nor the Collateral Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or Collateral Agent to liability or that is contrary to any Loan Document or applicable Legal Requirement, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of its respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or the Collateral Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders or Secured Parties as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.03 and 7.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be

deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender or the Collateral Agent. In the event that the Administrative Agent receives such a notice of the occurrence of a Default, the Administrative Agent shall (subject to Section 9.03) take such action with respect to such Default or Event of Default as shall reasonably be directed by the Majority Lenders, provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action) with respect to such Default as it shall deem advisable in the best interest of the Lender Parties.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation (whether written or oral) made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the value, validity, enforceability, effectiveness, sufficiency or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the inspection of, or to inspect, the Property (including the books and records) of the Borrower, (vi) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or (vii) any litigation or collection proceedings (or to initiate or conduct any such litigation or proceedings) under any Loan Document unless requested by the Majority Lenders in writing and its receives indemnification satisfactory to it from the Lenders.

Section 8.04 Reliance by Administrative Agent and the Collateral Agent. Each of the Administrative Agent and Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, writing or other communication (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each of the Administrative Agent and the Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance that by its terms must be fulfilled to the satisfaction of a Lender or the Collateral Agent, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Collateral Agent unless the Administrative Agent shall have received notice to the contrary from such Lender or the Collateral Agent prior to the making of such Advance. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and the Administrative Agent shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by

or through any one or more sub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 8.06 Resignation of the Administrative Agent or the Collateral Agent.

(a) The Administrative Agent and the Collateral Agent may at any time give notice of its resignation to the other Lender Parties and the Borrower. Upon receipt of any such notice of resignation, (i) the Majority Lenders shall have the right, with the prior written consent of the Borrower (which consent is not required if an Event of Default under Section 7.01(a) or Section 7.01(e) has occurred and is continuing and which consent shall not be unreasonably withheld or delayed), to appoint, as applicable, a successor Administrative Agent (which shall be a Lender or such other Person appointed by the Majority Lenders but in no event shall be a Disqualified Lender) or a successor Collateral Agent (which shall be a Lender or such other Person appointed by the Majority Lenders but in no event shall be a Disqualified Lender). If no such successor Administrative Agent or Collateral Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent or Collateral Agent gives notice of its resignation (or such earlier day as shall be agreed by the applicable Majority Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation by the Administrative Agent or the Collateral Agent shall become effective in accordance with such notice on the Resignation Effective Date.

(b) [Reserved].

(c) With effect from the Resignation Effective Date (i) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the retiring Administrative Agent or Collateral Agent, as applicable, shall instead be made by or to each applicable class of Lenders, until such time as the Majority Lenders appoint a successor Administrative Agent or Collateral Agent as provided for above in this paragraph. Upon the

acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent or Collateral Agent, as applicable, and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's or Collateral Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Sections 9.02(a) and (b), Section 8.09 and Section 2.13(d) shall continue in effect for the benefit of such retiring Administrative Agent and Collateral Agent, as applicable, their respective sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent or Collateral Agent, as applicable, was acting as Administrative Agent or Collateral Agent, as applicable.

Section 8.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender Party acknowledges and agrees that it has, independently and without reliance upon the Administrative Agent or any other Lender Party or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender Party also acknowledges and agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender Party or any of their Related Parties, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent or the Collateral Agent hereunder and for other information in the Administrative Agent's or the Collateral Agent's possession which has been requested by a Lender and for which such Lender pays the Administrative Agent's and Collateral Agent's expenses in connection therewith, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of the Borrower or its Affiliates that may come into the possession of the Administrative Agent, the Collateral Agent or any of their respective Affiliates.

Section 8.08 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Lead Arranger, documentation agent, syndication agent or other titles to Lenders or Affiliates of a Lender which may be listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder.

Section 8.09 Indemnification.

(a) INDEMNITY OF ADMINISTRATIVE AGENT AND COLLATERAL AGENT. THE LENDERS SEVERALLY AGREE TO INDEMNIFY THE LEAD ARRANGER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND EACH OF THEIR RESPECTIVE AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS (TO THE EXTENT NOT REIMBURSED BY THE BORROWER), RATABLY ACCORDING TO THE RESPECTIVE PRINCIPAL AMOUNTS OF THE ADVANCES THEN HELD BY EACH OF THEM (OR IF NO PRINCIPAL OF THE ADVANCES IS AT THE TIME OUTSTANDING, RATABLY ACCORDING TO THE RESPECTIVE COMMITMENTS HELD BY EACH OF THEM IMMEDIATELY PRIOR TO THE TERMINATION, EXPIRATION OR FULL REDUCTION OF EACH SUCH COMMITMENT), FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST SUCH INDEMNIFIED PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY ACTION TAKEN OR OMITTED BY THE ADMINISTRATIVE AGENT UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF SUCH INDEMNIFIED PERSON), AND INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CLAIMS, PROVIDED THAT NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR DISBURSEMENTS RESULTING FROM SUCH INDEMNIFIED PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN EACH CASE, AS DETERMINED BY A FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION. WITHOUT LIMITATION OF THE FOREGOING, EACH LENDER AGREES TO REIMBURSE EACH OF THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT PROMPTLY UPON DEMAND FOR ITS RATABLE SHARE (DETERMINED AS SET FORTH ABOVE IN THIS PARAGRAPH) OF ANY OUT-OF-POCKET EXPENSES (INCLUDING COUNSEL FEES) INCURRED BY THE ADMINISTRATIVE AGENT AND/OR THE COLLATERAL AGENT IN CONNECTION WITH THE PREPARATION, EXECUTION, DELIVERY, ADMINISTRATION, MODIFICATION, AMENDMENT, OR ENFORCEMENT (WHETHER THROUGH NEGOTIATIONS, LEGAL PROCEEDINGS, OR OTHERWISE) OF, OR LEGAL ADVICE IN RESPECT OF RIGHTS OR RESPONSIBILITIES UNDER, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, TO THE EXTENT THAT THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT IS NOT REIMBURSED FOR SUCH BY THE BORROWER.

Section 8.10 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the

Borrower, the Administrative Agent (irrespective of whether the principal of any Advance shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Collateral Agent and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Collateral Agent and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Collateral Agent and the Administrative Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other Property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent or the Collateral Agent, as applicable, and, in the event that the Administrative Agent or the Collateral Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent or the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent, the Collateral Agent and their respective agents and counsel, and any other amounts due to the Administrative Agent or the Collateral Agent under Sections 2.07, 9.01 and 9.02.

Section 8.11 Collateral Matters.

(a) Each of the Administrative Agent and the Collateral Agent is authorized on behalf of the Secured Parties, without the necessity of any notice to or further consent from such Secured Parties, from time to time, to take any actions with respect to any Collateral or Security Instruments which may be necessary to perfect and maintain the Liens upon the Collateral granted pursuant to the Security Instruments. Each of the Administrative Agent and the Collateral Agent is further authorized (but not obligated) on behalf of the Secured Parties, without the necessity of any notice to or further consent from the Secured Parties, from time to time, to take any action in exigent circumstances as may be reasonably necessary to preserve any rights or privileges of the Secured Parties under the Loan Documents or applicable Legal Requirements. By accepting the benefit of the Liens granted pursuant to the Security Instruments, each Secured Party hereby agrees to the terms of this paragraph (a).

(b) The Lenders hereby, and any other Secured Party by accepting the benefit of the Liens granted pursuant to the Security Instruments, irrevocably authorize each of the Administrative Agent and the Collateral Agent to, and the Administrative Agent and the Collateral Agent shall, upon request of the Borrower, (i) release any Lien granted to or held by the

Administrative Agent and/or the Collateral Agent upon any Collateral (a) upon termination of this Agreement and the payment in full of all outstanding Advances and all other Obligations (other than contingent indemnity obligations for which no claims have been made); or (b) constituting Property in which the Borrower did not own an interest at the time the Lien was granted or at any time thereafter other than as a result of a transaction prohibited hereunder and (ii) as a result of a transaction permitted under this Agreement or upon termination of this Agreement.. Upon the request of the Administrative Agent and/or the Collateral Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's or the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 8.11. At the request of the Borrower, the Administrative Agent and/or the Collateral Agent shall promptly provide the releases of Collateral permitted to be released under this Section 8.11 subject to evidence of such transaction and release documentation reasonably satisfactory to the Administrative Agent and/or the Collateral Agent. Upon any of the Collateral constituting personal property being Disposed of as permitted under this Agreement, then such Collateral shall be automatically released from the Liens created under the applicable Security Instrument, provided that (x) the Administrative Agent and the Collateral Agent shall provide any evidence of such Lien release requested by the Borrower in accordance with this Section 8.11.

(c) Notwithstanding anything contained in any of the Loan Documents to the contrary, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder, under the Guaranty and under the Security Instruments may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, on behalf of the Secured Parties in accordance with the terms hereof and the other Loan Documents. By accepting the benefit of the Liens granted pursuant to the Security Instruments, each Secured Party not party hereto hereby agrees to the terms of this paragraph (c).

Section 8.12 Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Secured Parties, shall have the right, at the direction of the Majority Lenders, to credit bid and purchase for the benefit of the Administrative Agent and the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Legal Requirements.

(b) Each Secured Party hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Majority Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under Legal Requirements to credit bid at

foreclosure sales, UCC sales or other similar Dispositions of Collateral; provided that, for the avoidance of doubt, this subsection (b) shall not limit the rights of (i) any Lender or Affiliate of a Lender to terminate any Hedge Contract or net out any resulting termination values or (ii) any Lender or Affiliate of a Lender to terminate any (A) commercial credit cards, (B) stored value cards and (C) any other Treasury Management Arrangement (including, without limitation, controlled disbursement, purchase card arrangements, automated clearinghouse transactions, return items, overdrafts and interstate depository network services) or set off against any Deposit Accounts.

Section 8.13 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the loans or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender’s entrance into, participation in, administration of and performance of the loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent, the Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE IX MISCELLANEOUS

Section 9.01 Costs and Expenses. The Borrower agrees to pay promptly, upon written demand:

(a) all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, and amendment of this Agreement and the other Loan Documents, including, without limitation, reasonable fees, expenses, charges and disbursements of one primary outside counsel and one local counsel in each relevant jurisdiction for the Administrative Agent; and

(b) all reasonable and documented out-of-pocket costs and expenses, if any, of the Administrative Agent and each Lender (including, without limitation, outside counsel fees (limited to the reasonable and documented out-of-pocket fees and disbursements of one primary outside counsel and one local counsel in each relevant jurisdiction for the Administrative Agent and, after the occurrence of an Event of Default, one counsel for the group of Lenders taken as whole), expenses, charges and disbursements of each Lender and the Administrative Agent but excluding amounts that Borrower and Sponsor are not required to indemnify the indemnified persons for pursuant to Section 9.02) in connection with the enforcement of or protection of rights under (whether through negotiations, legal proceedings, or otherwise) this Agreement, the Notes, and the other Loan Documents (including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Advances).

Section 9.02 Indemnification; Waiver of Damages.

(a) INDEMNIFICATION. EACH OF THE BORROWER AND SPONSOR AGREES TO, AND DOES HEREBY, JOINTLY AND SEVERALLY, INDEMNIFY AND HOLD HARMLESS THE LEAD ARRANGER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, EACH LENDER, AND EACH OF THEIR RESPECTIVE RELATED PARTIES (EACH, AN “INDEMNITEE”) FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND EXPENSES OF ANY KIND OR NATURE (INCLUDING REASONABLE FEES, CHARGES, AND DISBURSEMENTS OF COUNSEL AND ANY CONSULTANT FOR ANY INDEMNITEE), TO WHICH SUCH INDEMNITEE MAY BECOME SUBJECT OR THAT MAY BE INCURRED BY OR ASSERTED OR AWARDED AGAINST SUCH INDEMNITEE BY ANY PERSON (INCLUDING THE BORROWER, ANY SUBSIDIARY OR ANY AFFILIATE THEREOF), IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH OR BY REASON OF (INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH ANY INVESTIGATION, LITIGATION, OR PROCEEDING OR PREPARATION OF A DEFENSE IN CONNECTION THEREWITH) (I) THE EXECUTION OR DELIVERY OF ANY LOAN DOCUMENT, OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (II) ANY ADVANCE OR THE USE OR PROPOSED USE OF THE PROCEEDS THEREFROM, (III) ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS ON, AT, UNDER OR FROM ANY PROPERTY OWNED, LEASED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR AFFILIATE THEREOF, OR ANY ENVIRONMENTAL CLAIM RELATED IN ANY WAY TO THE BORROWER OR ANY SUBSIDIARY OR AFFILIATE THEREOF AT ANY TIME, (IV) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY OR AFFILIATE THEREOF, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, OR (V) ANY CLAIM (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL CLAIMS), INVESTIGATION, LITIGATION OR OTHER PROCEEDING (WHETHER OR NOT THE ADMINISTRATIVE AGENT OR ANY LENDER IS A PARTY THERETO) AND THE PROSECUTION AND DEFENSE THEREOF, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE ADVANCES, ANY LOAN DOCUMENT OR ANY DOCUMENTS CONTEMPLATED BY OR REFERRED TO HEREIN OR THEREIN OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (AND IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF SUCH INDEMNITEE); PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A

COURT OF COMPETENT JURISDICTION BY FINAL AND NON-APPEALABLE JUDGMENT (A) TO HAVE RESULTED FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, (B) TO HAVE RESULTED FROM A CLAIM BROUGHT BY THE BORROWER AGAINST ANY INDEMNITEE OF ANY MATERIAL BREACH OF SUCH INDEMNITEE'S FUNDING OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR (C) ARE ON ACCOUNT OF A DISPUTE ARISING SOLELY AMONG INDEMNITEES (OTHER THAN THE ADMINISTRATIVE AGENT IN ITS ROLE AS SUCH) TO THE EXTENT SUCH DISPUTE DOES NOT INVOLVE AND IS NOT RELATED TO ANY ACT, OMISSION OR REPRESENTATION ON THE PART OF, OR ANY INFORMATION PROVIDED BY OR ON BEHALF OF, THE BORROWER OR ANY AFFILIATE THEREOF. THIS INDEMNITY SHALL NOT APPLY WITH RESPECT TO TAXES OTHER THAN ANY TAXES THAT REPRESENT LOSSES, CLAIMS, DAMAGES, ETC. ARISING FROM ANY NON-TAX CLAIM. The Borrower and Sponsor shall not, without the prior written consent of each Indemnitee affected thereby, settle any threatened or pending claim or action that would give rise to the right of any Indemnitee to claim indemnification hereunder unless such settlement (x) includes a full and unconditional release of all liabilities arising out of such claim or action against such Indemnitee, (y) does not include any statement as to or an admission of fault, culpability or failure to act by or on behalf of any Indemnitee and (z) does not require any actions to be taken or refrained from being taken by any Indemnitee other than the execution of the related settlement agreement, if any.

(b) WAIVER OF CONSEQUENTIAL DAMAGES, ETC. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENT THE PARTIES HERETO SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST ANY OTHER PARTY HERETO, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, ANY ADVANCE OR THE USE OF THE PROCEEDS THEREOF; PROVIDED THAT, THIS WAIVER AND AGREEMENT SHALL NOT LIMIT THE BORROWER'S AND SPONSOR'S INDEMNIFICATION OBLIGATIONS TO THE EXTENT SET FORTH IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS TO THE EXTENT SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARE INCLUDED IN ANY THIRD PARTY CLAIM IN CONNECTION WITH WHICH SUCH INDEMNIFIED PERSON IS OTHERWISE ENTITLED TO INDEMNIFICATION HEREUNDER OR THEREUNDER. NO INDEMNITEE SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(c) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(d) Survival. Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section 9.02 shall survive the termination of this Agreement, the termination of all Commitments, and the payment in full of the Advances and all other amounts payable under this Agreement.

Section 9.03 Waivers and Amendments. No amendment or waiver of any provision of this Agreement, the Notes, or any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Majority Lenders and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that:

(a) no amendment, waiver or consent shall, without the consent of each Lender directly and adversely affected thereby, (i) reduce the amount of, or rate of interest on, the Advances (other than the Default Rate of interest on the Advances which may be reduced or waived by the Majority Lenders), (ii) reduce the amount of any fees or other amounts payable hereunder or under any other Loan Document (other than those specifically addressed above in this Section 9.03 and other than mandatory prepayments under Section 2.04(b), which may be reduced or waived by the Majority Lenders), (iii) increase the Commitment or any obligations of any Lender, (v) postpone or extend any date fixed for any payment of any fees or other amounts payable hereunder (other than those otherwise specifically addressed in this Section 9.03 and other than mandatory prepayments under Section 2.04(b), which may be reduced or waived by the Majority Lenders), including an extension of the Maturity Date, or (iv) amend, waive or consent to depart from Section 2.12(e) or Section 7.06;

(b) no amendment, waiver or consent shall, unless the same shall be in writing and signed by each Lender, (i) except as permitted under Section 8.11(b), release all or substantially all of the Collateral; or (ii) amend the definition of "Majority Lenders", this Section 9.03 or any other provision in any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder (other than as provided in clause (c) below); and

(c) no amendment, waiver, or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document.

Section 9.04 Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 9.05 Survival of Representations and Obligations.

(a) All representations and warranties set forth in Article IV and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of Article VIII or Article IX and any other similar indemnity provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before. Without limiting the foregoing, all obligations of the Borrower provided for in Sections 2.13(d), 9.01 and 9.02 and all of the obligations of the Lenders in Section 8.09 shall survive any termination of this Agreement and repayment in full of the Obligations. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

Section 9.06 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent, and when the Administrative Agent shall have, as to each Lender, either received a counterpart hereof executed by such Lender or been notified by such Lender that such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent, and each Lender and their respective permitted successors and assigns, except that the Borrower shall not have the right to assign its rights or delegate its duties under this Agreement or any other Loan Document or any interest in this Agreement or any other Loan Document without the prior written consent of each Lender, except as otherwise permitted by Section 6.04. The Borrower agrees that no Affiliate, equityholder or creditor of the Borrower is intended to be, and none of such Persons shall be, third party beneficiaries of this Agreement or any other Loan Document, and therefore no Indemnitee will have any liability (whether direct or indirect, in contract or tort, or otherwise) to the Borrower's respective Affiliate that is not a party hereto or to any the Borrower's equityholders or creditors arising out of, related to or in connection with any aspect of the transactions contemplated hereby.

Section 9.07 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its

rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignment by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. The aggregate amount of the Commitment (which for this purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advances of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than \$1,000,000, unless (A) such assignment is to a Lender, an Affiliate of a Lender, or an Approved Fund or (B) each of the Administrative Agent and, so long as no as no Event of Default under Section 7.01(a) or Section 7.01(e) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Advance or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i) of this Section and, in addition:

(A) prior to April 1, 2025, the consent of the Borrower shall be required unless (x) an Event of Default under Section 7.01(a) or Section 7.01(e) has occurred and is continuing at the time of such assignment, (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, or (z) such assignment is to an assignee that covenants to convert the Indebtedness existing under this Agreement to the indebtedness contemplated pursuant to the Note Purchase Agreement pursuant to Section 2.15 of this Agreement; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of a Lender, or an Approved Fund.

(iv) Assignment and Acceptance. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) Limitations on Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, or (B) any Disqualified Lender.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.12, 9.01, and 9.02 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lender. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of loans or Commitments, or disclosure of confidential information, to any

Disqualified Lender. Notwithstanding the foregoing, any assignment or sale of participations to a Disqualified Lender shall be null and void.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at its address referred to in Section 9.09 a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Borrower hereby agrees that the Administrative Agent acting as its agent solely for the purpose set forth above in this clause (c), shall not subject the Administrative Agent to any fiduciary or other implied duties, all of which are hereby waived by the Borrower.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, a Disqualified Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Collateral Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.02(a) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (a), (b), or (c) of Section 9.03 (that directly and adversely affects such Participant). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11, and 2.13 (subject to the requirements and limitations therein, including the requirements under Section 2.13(f) (it being understood that the documentation required under Section 2.13(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.14 as if it were an assignee under paragraph (b)

of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.11 or 2.13, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.14 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 7.04 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.12(e) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. The Borrower hereby agrees that each Lender acting as its agent solely for the purpose set forth above in this clause (d), shall not subject such Lender to any fiduciary or other implied duties, all of which are hereby waived by the Borrower.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Advances in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

Section 9.08 Confidentiality. Each Lender Party agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and their Related Parties (it being understood that the Persons to whom

such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) as to the extent required by Legal Requirements or regulations or in any legal, judicial, administrative or other compulsory proceeding, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any agreement related to any Obligation, or any action or proceeding relating to this Agreement, any other Loan Document or any agreement related to any Obligation, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (iii) to an investor or prospective investor in an Approved Fund that is instructed of the confidential nature of the information and that such Information may be used solely for the purpose of evaluating an investment or prospective investment in such Approved Fund, (iv) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, or (v) to a nationally recognized rating agency that requires access to information regarding the Borrower, the Advances and the Loan Documents in connection with ratings issued with respect to an Approved Fund, (g) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility, (h) with the consent of the Borrower, (i) to Gold Sheets and other similar bank trade publications, such information to consist of deal terms and other information customarily found in such publications, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section by the disclosing party or its Related Parties or (ii) becomes available to any Secured Party or affiliate thereof from a third party that is not an Affiliate or Related Party of such Secured Party and that is not, to such Person's actual knowledge, subject to confidentiality obligations to the Borrower, (k) to governmental regulatory authorities in connection with any regulatory examination of any Lender Party or, if such Lender Party deems necessary for the mitigation of claims by those authorities against such Lender Party or any of its subsidiaries or affiliates, in accordance with such Lender Party's regulatory compliance policy, (l) to the extent that such information is independently developed by such Lender Party, or (m) for purposes of establishing a "due diligence" defense. For purposes of this Section, "Information" means all information received from the Borrower or Affiliate thereof relating to the Borrower or Affiliate thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Collateral Agent on a nonconfidential basis prior to disclosure by the Borrower or Affiliate thereof; provided that, in the case of information received from the Borrower or any Subsidiary or Affiliate thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this

Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, nothing in this Agreement shall (a) restrict any Lender Party from providing information to any bank or other regulatory or governmental authorities, including the Federal Reserve Board and its supervisory staff; (b) require or permit any Lender Party to disclose to the Borrower that any information will be or was provided to the Federal Reserve Board or any of its supervisory staff; or (c) require or permit any Lender Party to inform the Borrower of a current or upcoming Federal Reserve Board examination or any nonpublic Federal Reserve Board supervisory initiative or action.** For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority.

Section 9.09 Notices, Etc.

(a) All notices and other communications (other than Notices of Borrowing, which are governed by Article II of this Agreement) shall be in writing and hand delivered with written receipt, telecopied, sent by facsimile, sent by electronic mail as permitted under paragraph (b) below (with, in the case of electronic mail, a hard copy sent as otherwise permitted in this Section 9.09), sent by a nationally recognized overnight courier, or sent by certified mail, return receipt requested as follows: if to the Borrower, as specified on Schedule 9.09, if to the Administrative Agent or the Collateral Agent, at its credit contact specified under its name on Schedule 9.09, and if to any Lender at its credit contact specified in its Administrative Questionnaire. Each party may change its notice address by written notification to the other parties. All such notices and communications shall be effective when delivered, except that (i) notices and communications to the Administrative Agent, any Lender or the Collateral Agent pursuant to Article II shall not be effective until received and, in the case of facsimile delivered under Article II, such receipt is confirmed by the Administrative Agent, such Lender or the Collateral Agent, as applicable, verbally or in writing and (ii) notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient

(such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”).

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of communications through the Platform. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

Section 9.10 USURY NOT INTENDED. IT IS THE INTENT OF THE BORROWER AND EACH LENDER PARTY IN THE EXECUTION AND PERFORMANCE OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAWS, INCLUDING CONFLICTS OF LAW CONCEPTS, GOVERNING THE ADVANCES OF EACH LENDER INCLUDING SUCH APPLICABLE LEGAL REQUIREMENTS OF THE STATE OF NEW YORK, IF ANY, AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT, AND ANY OTHER JURISDICTION WHOSE LAWS MAY BE MANDATORILY APPLICABLE TO SUCH LENDER NOTWITHSTANDING THE

OTHER PROVISIONS OF THIS AGREEMENT. IN FURTHERANCE THEREOF, THE LENDER PARTIES AND THE BORROWER STIPULATES AND AGREES THAT NONE OF THE TERMS AND PROVISIONS CONTAINED IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL EVER BE CONSTRUED TO CREATE A CONTRACT TO PAY, AS CONSIDERATION FOR THE USE, FORBEARANCE OR DETENTION OF MONEY, INTEREST AT A RATE IN EXCESS OF THE MAXIMUM RATE AND THAT FOR PURPOSES OF THIS AGREEMENT "INTEREST" SHALL INCLUDE THE AGGREGATE OF ALL CHARGES WHICH CONSTITUTE INTEREST UNDER SUCH LAWS THAT ARE CONTRACTED FOR, CHARGED OR RECEIVED UNDER THIS AGREEMENT; AND IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, UNDER ANY CIRCUMSTANCES THE AGGREGATE AMOUNTS TAKEN, RESERVED, CHARGED, RECEIVED OR PAID ON THE ADVANCES, INCLUDE AMOUNTS WHICH BY APPLICABLE LEGAL REQUIREMENT ARE DEEMED INTEREST WHICH WOULD EXCEED THE MAXIMUM RATE, THEN SUCH EXCESS SHALL BE DEEMED TO BE A MISTAKE AND EACH LENDER RECEIVING SAME SHALL CREDIT THE SAME ON THE PRINCIPAL OF ITS ADVANCES (OR IF SUCH ADVANCES SHALL HAVE BEEN PAID IN FULL, REFUND SAID EXCESS TO THE BORROWER). IN THE EVENT THAT THE MATURITY OF THE ADVANCES ARE ACCELERATED BY REASON OF ANY ELECTION OF THE HOLDER THEREOF RESULTING FROM ANY EVENT OF DEFAULT UNDER THIS AGREEMENT OR OTHERWISE, OR IN THE EVENT OF ANY REQUIRED OR PERMITTED PREPAYMENT, THEN SUCH CONSIDERATION THAT CONSTITUTES INTEREST MAY NEVER INCLUDE MORE THAN THE MAXIMUM RATE, AND EXCESS INTEREST, IF ANY, PROVIDED FOR IN THIS AGREEMENT OR OTHERWISE SHALL BE CANCELED AUTOMATICALLY AS OF THE DATE OF SUCH ACCELERATION OR PREPAYMENT AND, IF THERETOFORE PAID, SHALL BE CREDITED ON THE APPLICABLE ADVANCES (OR, IF THE APPLICABLE ADVANCES SHALL HAVE BEEN PAID IN FULL, REFUNDED TO THE BORROWER OF SUCH INTEREST). IN DETERMINING WHETHER OR NOT THE INTEREST PAID OR PAYABLE UNDER ANY SPECIFIC CONTINGENCIES EXCEEDS THE MAXIMUM RATE, THE BORROWER AND THE LENDERS SHALL TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LEGAL REQUIREMENT AMORTIZE, PRORATE, ALLOCATE AND SPREAD IN EQUAL PARTS DURING THE PERIOD OF THE FULL STATED TERM OF THE OBLIGATIONS ALL AMOUNTS CONSIDERED TO BE INTEREST UNDER APPLICABLE LEGAL REQUIREMENT AT ANY TIME CONTRACTED FOR, CHARGED, RECEIVED OR RESERVED IN CONNECTION WITH THE OBLIGATIONS. THE PROVISIONS OF THIS SECTION SHALL CONTROL OVER ALL OTHER PROVISIONS OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS WHICH MAY BE IN APPARENT CONFLICT HEREWITH.

Section 9.11 Usury Recapture. In the event the rate of interest chargeable under this Agreement or any other Loan Document at any time is greater than the Maximum Rate, the unpaid

principal amount of the Advances shall bear interest at the Maximum Rate until the total amount of interest paid or accrued on the Advances equals the amount of interest which would have been paid or accrued on the Advances if the stated rates of interest set forth in this Agreement or applicable Loan Document had at all times been in effect. In the event, upon payment in full of the Advances, the total amount of interest paid or accrued under the terms of this Agreement and the Advances is less than the total amount of interest which would have been paid or accrued if the rates of interest set forth in this Agreement had, at all times, been in effect, then the Borrower shall, to the extent permitted by applicable Legal Requirement, pay the Administrative Agent for the account of the Lenders an amount equal to the difference between (i) the lesser of (A) the amount of interest which would have been charged on its Advances if the Maximum Rate had, at all times, been in effect and (B) the amount of interest which would have accrued on its Advances if the rates of interest set forth in this Agreement had at all times been in effect and (ii) the amount of interest actually paid under this Agreement on its Advances. In the event the Lenders ever receive, collect or apply as interest any sum in excess of the Maximum Rate, such excess amount shall, to the extent permitted by law, be applied to the reduction of the principal balance of the Advances, and if no such principal is then outstanding, such excess or part thereof remaining shall be paid to the Borrower.

Section 9.12 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Lender Party, or any Lender Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any Lender Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender Party severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate in effect from time to time, in the applicable currency of such recovery or payment. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 9.13 Performance of Duties. The Borrower's obligations under this Agreement and each of the other Loan Documents shall be performed by the Borrower at its sole cost and expense.

Section 9.14 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable

so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the credit facility evidenced hereby has not been terminated.

Section 9.15 Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

Section 9.16 Submission to Jurisdiction; Service of Process. **The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any Secured Party or any Related Party of any Secured Party in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Legal Requirement, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Legal Requirement. Nothing in this Agreement or in any other Loan Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its Properties in the courts of any jurisdiction. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.09. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Legal Requirement.**

Section 9.17 Waiver of Venue. The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Legal Requirement, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 9.16. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirement, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 9.18 Execution in Counterparts; Electronic Execution.

(a) Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Loan Documents including any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Legal Requirement, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 9.19 Independent Effect of Covenants. The Borrower expressly acknowledge and agree that each covenant contained in Articles V or VI hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles V or VI, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles V or VI.

Section 9.20 USA Patriot Act. Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act.

Section 9.21 [Reserved].

Section 9.22 NON-RELIANCE. IN EXECUTING THIS AGREEMENT, THE BORROWER HEREBY WARRANTS AND REPRESENTS IT IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION OTHER THAN THOSE IN THIS AGREEMENT AND IS RELYING UPON ITS OWN JUDGMENT AND ADVICE OF ITS ATTORNEYS.

Section 9.23 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENT, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER

BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.24 Reversal of Payments. To the extent the Borrower makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other applicable Legal Requirement or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

Section 9.25 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower hereto agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 9.26 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Collateral Agent and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Collateral Agent and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Collateral Agent or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other

modification hereof or of any other Loan Document (irrespective of whether any Lender Party has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Collateral Agent or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Collateral Agent, the Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Collateral Agent or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Collateral Agent and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) The Borrower acknowledges and agrees that each Lender, the Collateral Agent, the Administrative Agent and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, the Collateral Agent, the Administrative Agent or Affiliate thereof were not a Lender, the Collateral Agent, Administrative Agent or an Affiliate thereof (or an agent or any other Person with any similar role under the credit facilities evidenced hereby) and without any duty to account therefor to any other Lender, the Collateral Agent, the Administrative Agent, the Borrower or any Affiliate of the foregoing. Each Lender, the Collateral Agent, the Administrative Agent and any Affiliate thereof may accept fees and other consideration from the Borrower or any Affiliate thereof for services in connection with this Agreement, the credit facilities evidenced hereby or otherwise without having to account for the same to any other Lender, the Collateral Agent, the Administrative Agent, the Borrower or any Affiliate of the foregoing.

Section 9.27 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Instruments which imposes additional burdens on the Borrower or further restricts the rights of the Borrower or gives the Administrative Agent, the Collateral Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

Section 9.28 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 9.29 **ORAL AGREEMENTS.** THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS DEFINED IN THIS AGREEMENT, REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the day and year first above written.

CALISTOGA RESILIENCY CENTER, LLC

By: /s/ Robert Piconi
Name: Robert Piconi
Title: President

[Signature Page to Credit Agreement]

JEFFERIES FINANCE LLC, as Administrative
Agent, Collateral Agent, and a Lender

By: /s/ John Koehler
Name: John Koehler
Title: Managing Director

[Signature Page to Credit Agreement]

ANNEX I

INITIAL LENDERS AND COMMITMENTS

Lender	Commitments
Jefferies Finance LLC	\$27,826,365.17

SCHEDULE 1.01

SITE

Lying within the City of Calistoga, County of Napa, State of California and being a portion of the parcel of land described in the deed to the City of Calistoga recorded February 4, 1916 in Book 232 of Deeds at page 200, a portion of the parcels of land described in the deed to the City of Calistoga recorded May 11, 1943 in Book 194 of Official Records at Page 86, and a portion of the parcel of land described as Parcel No. 1 in the deed to the City of Calistoga recorded September 24, 1986 in Book 1468 of Official Records at Page 214, all in the Office of the County Recorder of Napa County, said portion of land being more particularly described as follows:

COMMENCING at a found 3" brass disk well monument at the centerline of Washington Street in the City of Calistoga; thence south 71°18'40" East 626.60 feet to another 3" brass disc well monument as shown on the Record of Survey Map Filed in Bool 48 at Page 81 Napa County Records (Basis of Bearings for this legal description); thence South 72°22'46" East 852.3 feet to the POINT OF BEGINNING; thence North 24°38'38" East 106.69 feet; thence South 63°57'04" East 370 feet; thence South 12°47'47" West 26.60 feet; thence South 78°56'57" West 68.74 feet; thence North 71°01'03" West 371.09 feet to the POINT OF BEGINNING

Containing 0.70 acres, more or less.

SCHEDULE 3.01

MATERIAL ADVERSE CHANGE

There was a breach under the Power Purchase Agreement that has since been cured. The Power Purchase Agreement had a Guaranteed Initial Delivery Date of November 30, 2024. The parties have since signed the PPA Amendment extending that deadline to September 1, 2025. The PPA Amendment requires CPUC approval to be effective. Such approval is a condition precedent set forth in Section 3.02(k).

SCHEDULE 3.02

CONSENTS AND NOTICES

1. Consent to collateral assignment of the Power Purchase Agreement;
 2. Consent to collateral assignment of the EPC Contract;
 3. Consent to collateral assignment of the O&M Agreement; and
 4. Notice to the City of Calistoga, California of the Mortgage.
-

SCHEDULE 4.07

LITIGATION

None.

SCHEDULE 4.15

PERMITS, LICENSES, ETC.

CPUC.

SCHEDULE 4.26

LOCATION OF BUSINESS AND OFFICES

Calistoga Resiliency Center, LLC
4165 East Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Attention: Chief Legal Officer
Email: legal@energyvault.com

SCHEDULE 5.02

REQUIRED INSURANCE

- A. Capitalized terms used in this Schedule 5.02 shall have the meanings given to such terms in the Agreement to which this Schedule 5.02 is attached and made part of (unless specifically defined in this Schedule 5.02).
- B. Borrower shall procure and/or maintain, or cause to be maintained, for the full term and thereafter as required herein, at their sole cost and expense, the following insurance coverage:
1. Builders risk insurance - until such time as the materials or work are accepted and put to their intended use or Commercial Operation Date (COD), and appropriate lien waivers are received and accepted by Borrower, written on an "all risk" builders risk form, on a completed value basis including change orders with the following minimum coverage: (i) replacement cost valuation; (ii) debris removal; (iii) earthquake, flood and wind coverage; (iv) permission for partial occupancy; (v) temporary off-site storage; (vi) transit; (vii) testing and startup; (viii) waiver of subrogation in favor of all named insureds, project manager, Collateral Agent and Secured Parties; (ix) name the Collateral Agent for the benefit of the Secured Parties as assignee on a lender's loss payable clause, or equivalent endorsement; and (x) a reasonable deductible based on market availability. Borrower will include general contractor, subcontractors, of all tiers, as named insureds with Borrower as the first named insured. Borrower will adjust all claims on behalf of all named insureds subject to lenders' loss payable clause or equivalent endorsement and in accordance with this Agreement.
 2. Property insurance shall insure the real and personal property (building, improvements and betterments, contents) under a form with coverage not less than that found on ISO "Causes of Loss – Special Form" and ISO "Building and Personal Property Form" or their equivalent forms (e.g., an "All Risk" manuscript policy) upon COD. The coverage shall include, but not be limited to: (i) 100% of the estimated replacement cost of the real and personal property; (ii) agreed amount endorsement and or a coinsurance waiver endorsement; (iii) building ordinance coverage (ordinance or law); (iv) equipment breakdown coverage; (v) name the Collateral Agent for the benefit of the Secured Parties as assignee on a lender's loss payable clause or equivalent endorsement; and (vi) loss of business income and extra expense coverage for a period not less than 12 months with an extended period of indemnity of 12 months. In addition to the ISO forms (or their equivalent), the property policy shall cover: (a) acts of terrorism (at a minimum TRIA coverage); and (b) the following additional perils with separate limits of no less than \$10,000,000 per occurrence for each of the following perils: windstorm, earthquake and flood. If the location is in a high hazard flood zone as determined by Federal Emergency Management Agency, then Borrower shall purchase and maintain coverage through the National Flood Insurance Plan to the maximum available limit for commercial concerns and \$5,000,000 of excess flood insurance including business income coverage.
 3. Commercial general liability insurance shall cover all operations and work of Borrower for bodily injury and property damage, advertising and personal injury liability with limits of not less than:
 - a. \$1,000,000 each occurrence.
-

- b. \$1,000,000 personal and advertising injury.
- c. \$2,000,000 general aggregate (other than products – completed operations).
- d. \$2,000,000 products – completed operations aggregate.

Coverage shall be written on an “occurrence” basis using an ISO CG 00 01 form (“claims made” is not acceptable), with the following minimum coverage:

- a. Separation of insureds.
- b. Contractual liability (as provided by ISO CG 00 01 form); with no additional restrictions, modifications, endorsements, or amendments.
- c. Additional insured coverage for Collateral Agent, Secured Parties and Customers as required by contract using an ISO CG 20 26 07/04 edition or equivalent form.
- d. Additional insured status must be on a primary and noncontributory basis.
- e. Waiver of subrogation in favor of Collateral Agent, Secured Parties and Customers as required by contract using an ISO CG 24 04 12/19 edition or equivalent form.
- f. No “height restriction”, “explosion, collapse or underground (XCU)” limitations or similar restrictions, endorsements, or exclusions.

Borrower shall maintain commercial general liability insurance for not less than ten (10) years, the statute of repose or statute of limitations, whichever is shorter, after the completion of the Project; including products - completed operations coverage and additional insured status as detailed above.

- 4. Commercial automobile liability insurance shall cover all owned, leased, non-owned and hired vehicles or any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws for bodily injury and property damage with limits of not less than \$1,000,000 per accident and shall be written on an ISO CA 00 01 or equivalent form and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
- 5. Workers’ compensation and employers’ liability insurance in accordance with the applicable state statutes and laws exercising jurisdiction over employees. Employers’ liability limits not less than:
 - a. \$1,000,000 bodily injury by accident, for each accident.
 - b. \$1,000,000 bodily injury by disease, policy limit.
 - c. \$1,000,000 bodily injury by disease, each employee.

To the fullest extent allowed by law, include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.

6. Umbrella liability insurance shall cover all operations and work of Borrower and shall be follow form of the employers' liability, commercial general liability and commercial automobile liability insurance policies as detailed in this Schedule 5.02, with limits of not less than:
 - a. \$25,000,000 each occurrence.
 - b. \$25,000,000 general aggregate.
 - c. \$25,000,000 products – completed operations aggregate.

Coverage shall be written on an "occurrence" basis form. Follow form of all underlying insurance policies for additional insured, primary and noncontributory basis and waiver of subrogation. Borrower shall maintain umbrella or excess liability insurance for not less than the ten (10) years, statute of repose or statute of limitations, whichever is shorter, after the completion of the project; including products - completed operations coverage and additional insured status as detailed above.

7. Contractors Pollution Liability (during construction/maintenance) and Pollution legal liability insurance which shall cover all operations, services and/or work with limits not less than \$5,000,000 per loss, schedule CRC location and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
 8. Cyber and privacy insurance shall cover all operations and work of Borrower with limits of not less than \$10,000,000 each claim and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
 9. Directors & Officers liability insurance for any actual or alleged act, error, statement, omission, or breach of duty by a director or officer in their capacity as such, or any matter claimed against them solely by reason of their status as a director or officer of the Borrower with limits of not less than \$5,000,000 each claim.
 10. Crime (fidelity) insurance covering all employees, temporary workers or independent contracts of Borrower with limits not less than \$1,000,000 each occurrence, including third party / client coverage where required by contract.
 11. And such other or additional insurance as may be customary, required by law, or as the Collateral Agent and Secured Parties, Customer or Borrower deems necessary to maintain.
- C. All reference to "ISO" means unamended or unaltered versions of the Insurance Services Office insurance policy forms and endorsements.
 - D. All required insurance shall use Insurers with a minimum A.M. Best rating of A- VIII and all insurers shall be licensed or authorized to do business in the state of California.
 - E. All required insurance shall be endorsed to provide Collateral Agent and Customers as required by contract to receive thirty (30) days prior written notice of cancellation or nonrenewal except ten (10) days for nonpayment of premium.
-

- F. Borrower shall furnish Collateral Agent and Customers as required by contract with ACORD certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Any waiver of the Borrower's obligation to furnish such ACORD certificate(s) or maintain such insurance must be in writing and signed by an authorized representative of Collateral Agent. Failure of Collateral Agent to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of Collateral Agent to identify a deficiency from evidence that is provided shall not be construed as a waiver of Borrower's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.
 - G. Borrower shall cooperate with Collateral Agent on behalf of the Secured Parties. Borrower shall notify Collateral Agent in writing as soon as practicable after they receive notice of any loss, damage, or injury or are aware of an incident which might give rise to a claim in the future when the amount of the claim or estimated amount of the claim is in excess of \$100,000. Borrower shall work with Collateral Agent on behalf of the Secured Parties to adjust claims per this Agreement and take no action which might operate to bar Collateral Agent or Secured Parties from obtaining protection afforded by Borrower's insurance policies or which might prejudice Collateral Agent or Secured Parties in its defense to a claim based on such loss, damage, or injury.
 - H. Upon the request of Collateral Agent, a complete copy of the required insurance policies and/or any other documents or information necessary to verify the insurance coverage required herein are in force and all premia have been paid, are to be submitted to Collateral Agent as soon as practical.
 - I. The insurance coverage set forth in this Insurance Schedule, will in no way limit Borrower liability arising out of any operations, services and/or work (including liability under indemnification provisions) or under any other agreements or by-law. Borrower will be responsible for determining appropriate inclusions, coverage and limits which may be in excess of the minimum insurance requirements set forth herein.
 - J. This Insurance Schedule is an independent contract provision and shall survive the termination or expiration of the agreement.
-

SCHEDULE 6.06

EXISTING INVESTMENTS

None.

SCHEDULE 6.08

AFFILIATE TRANSACTIONS

1. EPC Contract; and
 2. O&M Agreement.
-

SCHEDULE 9.09

ADDRESSES FOR NOTICES

Borrower:
Calistoga Resiliency Center, LLC
4165 East Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Attention: Chief Legal Officer
Email: legal@energyvault.com

Administrative Agent and Collateral Agent:

Jefferies Finance LLC
520 Madison Avenue
New York, NY 10022
Attention: Account Manager – Energy Vault
E-mail: JFIN.Admin@jefferies.com

With a copy (which shall not constitute notice) to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Jesse K. Sheff
Email: jesse.sheff@lw.com

SCHEDULE PL

PERMITTED LIENS

Napa County Tax Lien No. 23776, recorded on November 21, 2024. The property tax bill related to the lien has been paid in full on March 20, 2025.¹

¹ The Borrower expects the lien removal confirmation to be received from Napa County in 4 to 6 weeks.

EXHIBIT A

FORM OF ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (the “Assignment and Acceptance”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]¹ Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]² Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]³ hereunder are several and not joint.]⁴ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented, restated or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any guarantees included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without

¹ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

² For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

³ Select as appropriate.

⁴ Include bracketed language if there are either multiple Assignors or multiple Assignees.

recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: _____

2. Assignee[s]: _____

[Assignee, is an [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrower: CALISTOGA RESILIENCY CENTER, LLC, a Delaware limited liability company

4. Administrative Agent: JEFFERIES FINANCE LLC, as Administrative Agent under the Credit Agreement

5. Credit Agreement: Credit Agreement dated as of March 31, 2025 among the Borrower, the Lenders party thereto from time to time, and Jefferies Finance LLC, as Administrative Agent and Collateral Agent.

6. Assigned Interest[s]:

Assignor[s] ⁵	Assignee[s] ⁶	Aggregate Amount of Commitments /Advances for all Lenders ⁷	Amount of Commitment /Advances Assigned	Percentage Assigned of Commitment/ Advances ⁸	CUSIP Number
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

Trade Date: _____⁹

⁵ List each Assignor, as appropriate.

⁶ List each Assignee, as appropriate.

⁷ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁸ Set forth, to at least 9 decimals, as a percentage of the Commitment / Loans of all Lenders thereunder.

⁹ To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR[S]¹⁰
[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE[S]¹¹
[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and]¹² Accepted:

JEFFERIES FINANCE LLC, as Administrative Agent

By: _____
Name: _____
Title: _____

[Consented to:]¹³

¹⁰ Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

¹¹ Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

¹² To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

¹³ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

CALISTOGA RESILIENCY CENTER, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

**STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE**

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries, or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 9.07 of the Credit Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, and (vii) attached to the Assignment and Acceptance is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement (including any documentation required pursuant to Section 2.13(f) of the Credit Agreement), duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the law of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), without reference to any other conflicts or choice of law principles thereof.

EXHIBIT B
FORM OF GUARANTY

FORM OF GUARANTY AGREEMENT

made between

ENERGY VAULT HOLDINGS, INC.

and

JEFFERIES FINANCE LLC,
as Administrative Agent and Collateral Agent

Dated as of _____

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GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of _____, 2025, between Energy Vault Holdings, Inc., a Delaware corporation (the "Guarantor") and Jefferies Finance LLC, as Administrative Agent and Collateral Agent (in such capacities and together with its successors and assigns in such capacities, the "Agent") for the Secured Parties under that certain Credit Agreement, dated as of March 31, 2025, (as amended, restated, supplemented or otherwise modified or replaced from time to time, the "Credit Agreement"), among CALISTOGA RESILIENCY CENTER, LLC, a Delaware limited liability company (the "Borrower"), the lenders party thereto from time to time (the "Lenders") and the Agent.

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes the Guarantor; and

WHEREAS, the Borrower and the Guarantor are engaged in related businesses, and the Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby agrees with the Agent, for the benefit of the Guaranteed Parties, as follows:

SECTION 1 DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, all terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

(b) The following terms shall have the following meanings:

"Discharge of the Guaranteed Obligations" shall mean and shall have occurred when (i) all Guaranteed Obligations shall have been paid in full in cash and all other obligations under the Loan Documents shall have been performed (other than (a) those expressly stated to survive termination and (b) contingent obligations as to which no claim has been asserted, (ii) all Commitments shall have terminated or expired.

"Guaranty" shall mean this Guaranty as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Guaranteed Obligations" shall mean the "Obligations" as defined in the Credit Agreement.

“Guaranteed Parties” shall mean the “Secured Parties” as defined in the Credit Agreement.

“Oblige Guarantor” shall have the meaning set forth in Section 2.6.

“Voidable Transfer” shall have the meaning set forth in Section 2.10.

1.2 Other Definitional Provisions. (a) The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty, and Section, Schedule, Exhibit and Annex references, are to this Guaranty unless otherwise specified. References to any Schedule, Exhibit or Annex shall mean such Schedule, Exhibit or Annex as amended or supplemented from time to time in accordance with this Guaranty.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein shall mean payment in cash in immediately available funds.

(d) The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2 GUARANTEE

2.1 Guarantee of Guaranteed Obligations. The Guarantor hereby absolutely, unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to the Agent, for the benefit of the Guaranteed Parties, the prompt and complete payment and performance by the Borrower, when due (whether at the stated maturity, by acceleration or otherwise) of the Guaranteed Obligations. The Guarantor shall be liable under its guarantee set forth in this Section 2.1, without any limitation as to amount, for all present and future Guaranteed Obligations, including specifically all future increases, whether or not any such increase is committed, contemplated or provided for by the Loan Documents on the date hereof. Without limiting the generality of the foregoing, the Guarantor’s liability shall extend to all Guaranteed Obligations that would be owed by any other obligor on the Guaranteed Obligations but for the fact that they are unenforceable or not allowable due to the existence of a Bankruptcy Event involving such other obligor.

2.2 Limitation on Obligations Guaranteed. (a) Notwithstanding any other provision hereof, the right of recovery against the Guarantor under Section 2 hereof shall be limited to the maximum amount that can be guaranteed by such Guarantor without rendering such Guarantor’s obligations under Section 2 hereof void or voidable under applicable law, including, without

limitation, the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act or any similar foreign, federal or state law, in each case after giving full effect to the liability under such guarantee set forth in Section 2 hereof and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor. For purposes of the foregoing, all guarantees of such Guarantor other than the guarantee under Section 2 hereof will be deemed to be enforceable and payable after the guaranty under Section 2 hereof. To the fullest extent permitted by applicable law, this Section 2.2(a) shall be for the benefit solely of creditors and representatives of creditors of the Guarantor and not for its benefit or the holders of any Equity Interest in such Guarantor.

(b) The Guarantor agrees that Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.2(a) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Guaranteed Party hereunder.

2.3 Nature of Guarantee; Continuing Guarantee; Waivers of Defenses Etc. (a) The guarantee contained in this Section 2 is a continuing guarantee of payment and performance and not merely of collectability. The Guarantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon the Borrower with respect to the Guaranteed Obligations. Without limiting the generality of the foregoing, this Guaranty and the obligations of the Guarantor hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, set-off, defense, counterclaim, discharge or termination for any reason (other than a Discharge of the Guaranteed Obligations).

(b) The Guarantor agrees that its Guaranteed Obligations hereunder are independent of the Guaranteed Obligations of each other guarantor, and when making any demand hereunder or otherwise pursuing its rights and remedies hereunder against the Guarantor, any Guaranteed Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower and any other guarantor or against any collateral security or other guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and any failure by any Guaranteed Party to make any such demand, to pursue such other rights or remedies shall not relieve the Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Guaranteed Party against the Guarantor.

(c) No payment made by the Borrower or any other Person or received or collected by any Guaranteed Party by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Guarantor hereunder which shall, notwithstanding any such payment remain liable for the full amount of Guaranteed Obligations which remain outstanding from time to time until the Discharge of the Guaranteed Obligations.

(d) Without limiting the generality of the foregoing, the Guarantor agrees that its Guaranteed Obligations, and any security interest in respect thereof, shall not be affected by,

and shall remain in full force and effect without regard to, and hereby waives all, rights, claims or defenses that it might otherwise have (now or in the future) with respect to each of the following (whether or not the Guarantor has knowledge thereof):

(i) the validity or enforceability of the Credit Agreement, any other Loan Document, any of the Guaranteed Obligations or any guarantee or right of offset with respect thereto at any time or from time to time held by any Guaranteed Party;

(ii) any renewal, extension or acceleration of, or any increase in the amount of the Guaranteed Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents;

(iii) any failure, omission or delay in enforcement (by agreement or otherwise), or the stay or enjoining (by court order, operation of law or otherwise) of the exercise of enforcement, of any claim or demand or any right, power or remedy (whether arising under any Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any guaranty, agreement, Collateral or other security relating thereto;

(iv) any change, reorganization or termination of the corporate structure or existence of Borrower or any other guarantor or any of their Subsidiaries and any corresponding restructuring of the Guaranteed Obligations;

(v) any settlement, compromise, release, subordination or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Guaranteed Obligations;

(vi) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Guaranteed Obligations or any other impairment of such collateral;

(vii) any exercise of remedies with respect to the Collateral or any other security for the Guaranteed Obligations at such time and in such order and in such manner as the Agent and the Guaranteed Parties may decide, whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that the Guarantor would otherwise have and, without limiting the generality of the foregoing or any other provisions hereof, the Guarantor hereby expressly waives any and all benefits which might otherwise be available to such Guarantor under applicable law; and

(viii) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of the Guarantor as an obligor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower or any other guarantor for the Guaranteed Obligations, or of the Guarantor under the guarantee contained in this Section 2 or of any security interest granted by the Guarantor, whether in a Bankruptcy Event or in any other instance.

(e) In addition the Guarantor further waives any and all other defenses, set-offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it, the Borrower or any other guarantor or Person against any Guaranteed Party, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury.

2.4 Rights of Reimbursement, Contribution and Subrogation.

If any payment is made on account of the Guaranteed Obligations by the Guarantor or is received or collected on account of the Guaranteed Obligations from the Guarantor or its property:

(a) If such payment is made by the Guarantor or from its property in respect of the Guaranteed Obligations of the Borrower, such Guarantor shall, subject to the terms of this Section 2.4, be entitled to contribution in respect of such payment and, subject to and upon (but not before) a Discharge of the Guaranteed Obligations, shall be entitled (A) to demand and enforce reimbursement for the full amount of such payment from each other guarantor, and (B) to demand and enforce contribution in respect of such payment from each other guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each guarantor pays its fair share of such payment. For this purpose, the fair share of each guarantor shall be determined based on an equitable apportionment among all guarantors (other than the guarantor whose primary obligations were so guaranteed by the other guarantors) based on the relative value of their assets and any other equitable considerations deemed appropriate by the court. For purposes of the foregoing, all guarantees of such guarantor other than the guarantee under Section 2 hereof will be deemed to be enforceable and payable after the guaranty under Section 2 hereof.

(b) If and whenever any right of reimbursement or contribution becomes enforceable by the Guarantor against the Borrower or any other guarantor whether under Section 2.4(a) or otherwise, the Guarantor shall be entitled, subject to and upon (but not before) a Discharge of the Guaranteed Obligations, to be subrogated to any security interest that may then be held by the Agent upon any collateral securing or purporting to secure any of the Guaranteed Obligations. Any right of subrogation of the Guarantor shall be enforceable solely after a Discharge of the Guaranteed Obligations and solely against the other guarantors, and not against the Guaranteed Parties, and neither the Agent nor any other Guaranteed Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any collateral securing or purporting to secure any of the Guaranteed Obligations for any purpose related to any such right of subrogation.

(c) All rights and claims arising under this Section 2.4 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of the Guarantor as to any payment on account of either (x) the Guaranteed Obligations or (y) any other obligation that is secured by any collateral that also secures or purports to secure any of the Guaranteed Obligations, in each case made by it or received or collected from its property shall be fully subordinated to the Guaranteed Obligations in all respects prior to the Discharge of the Guaranteed Obligations. Until Discharge of the Guaranteed Obligations, the Guarantor shall not demand or receive any collateral security,

payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to the Guarantor in any bankruptcy case, receivership, or insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Agent, for application to the payment of the Guaranteed Obligations. If any such payment or distribution is received by the Guarantor, it shall be held by such Guarantor in trust, as trustee of an express trust for the benefit of the Guaranteed Parties, and shall forthwith be transferred and delivered by such Guarantor to the Agent, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of the Guarantors under this Guaranty and the other Loan Documents, including their liability for the Guaranteed Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectability or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.4 or otherwise. The invalidity, insufficiency, unenforceability or uncollectability of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Guaranteed Party against any Guarantor or its property. The Guaranteed Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

2.5 Payments. The Guarantor hereby guarantees that payments hereunder will be paid to the Agent without set-off, defense or counterclaim in Dollars in immediately available funds at the office of the Agent.

2.6 Subordination of Other Obligations. Any Indebtedness of the Borrower now or hereafter held by the Guarantor (the "Obligee Guarantor"), whether as original creditor, assignee, or by way of contribution, subrogation, restitution or otherwise, is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor shall be held in trust for the Agent on behalf of the Guaranteed Parties and shall forthwith be paid over to the Agent for the benefit of the Guaranteed Parties to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

2.7 Financial Condition of Borrower and other Guarantors. Any Advance may be made to the Borrower or continued from time to time, without notice to or authorization from the Guarantor regardless of the financial or other condition of Borrower or any other guarantor at the time of any such grant or continuation. No Guaranteed Party shall have any obligation to disclose or discuss with the Guarantor its assessment, or the Guarantor's assessment, of the financial condition of the Borrower or any other guarantor. The Guarantor has adequate means to obtain information from the Borrower and each other guarantor on a continuing basis concerning the financial condition of the Borrower and each other guarantor and its ability to perform its obligations under the Loan Documents, and the Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and each other Loan Party and each other guarantor and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. The Guarantor hereby waives and relinquishes any duty on the part of any Guaranteed Party to disclose any matter, fact or thing relating to the business, operations

or condition of the Borrower or any other guarantor now known or hereafter known by any Guaranteed Party.

2.8 Bankruptcy, Etc. Until a Discharge of the Guaranteed Obligations, the Guarantor shall not, without the prior written consent of the Agent, commence or join with any other person in commencing any Bankruptcy Event of or against the Borrower. The obligations of the Guarantor hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or Bankruptcy Event, voluntary or involuntary, involving the Borrower or by any defense which the Borrower may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. To the fullest extent permitted by law, the Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Agent, or allow the claim of the Agent in respect of, any interest, fees, costs, expenses or other Guaranteed Obligations accruing or arising after the date on which such case or proceeding is commenced.

2.9 Duration of Guarantee, Discharge of Guarantee Upon Sale of Guarantor. (a) Except as provided in Section 2.9(b) below, and subject to Section 2.10 below, the guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of the Guaranteed Obligations.

(b) At such time as there has been a Discharge of the Guaranteed Obligations, this Agreement and all obligations (other than those expressly stated to survive such termination) of the Agent and the Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of the Guarantor following any such termination, the Agent shall execute and deliver to the Guarantor such documents as the Guarantor shall reasonably request to evidence such termination.

2.10 Reinstatement. If at any time payment of any of the Guaranteed Obligations or any portion thereof is rescinded, disgorged or must otherwise be restored or returned by any Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or the Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or the Guarantor or any substantial part of its property, or otherwise, or if any Guaranteed Party repays, restores, or returns, in whole or in part, any payment or property previously paid or transferred to the Guaranteed Party in full or partial satisfaction of any Guaranteed Obligation, because the payment or transfer or the incurrence of the obligation is so satisfied, is declared to be void, voidable, or otherwise recoverable under any state or federal law (collectively a “Voidable Transfer”), or because such Guaranteed Party elects to do so on the reasonable advice of its counsel in connection with an assertion that the payment, transfer, or incurrence is a Voidable Transfer, then, as to any such Voidable Transfer, and as to all reasonable costs, expenses and attorney’s fees of the Guaranteed Party related thereto, the liability of the Guarantor hereunder will automatically and immediately be revived, reinstated, and restored and will exist as though the Voidable Transfer had never been made.

SECTION 3
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE GUARANTOR.

3.1 Representations and Warranties. The Guarantor represents and warrants to the Guaranteed Parties on the Closing Date that the representations and warranties set forth in Sections 4.01, 4.02, 4.03, 4.04, 4.05(b), 4.07 and 4.09 of the Credit Agreement, each of which is incorporated herein by reference to apply to the Guarantor, mutatis mutandis, are true and correct in all material respects, except for representations and warranties that are qualified as to “materiality”, “Material Adverse Effect” or similar language, in which case such representations and warranties shall be true and correct (after giving effect to any such qualification therein) in all respects as of such date, in each case unless expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the Guaranteed Parties shall be entitled to rely on each of such representations and warranties as if they were fully set forth herein, provided that each such reference in each such representation and warranty to any Borrower’s knowledge shall, for the purposes of this Section 3.1, be deemed to be a reference to such Guarantor’s knowledge.

SECTION 4
POWER OF ATTORNEY AND FURTHER ASSURANCES

4.1 Agent’s Appointment as Attorney-in-Fact, Etc. The Guarantor hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Guarantor and in the name of the Guarantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement.

4.2 Further Assurances. The Guarantor agrees that from time to time, at the expense of such Guarantor, it shall promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that the Agent may reasonably request, in order to ensure that the Guaranteed Parties receive the intended benefits hereof or to enable the Agent to exercise and enforce its rights and remedies hereunder.

SECTION 5
APPLICATION OF PROCEEDS

The Agent shall apply any proceeds of the guarantee set forth herein in the following order:

First, to the Agent to pay incurred and unpaid fees and expenses under the Loan Documents;

Second, to the Administrative Agent in respect of Obligations then due and owing and remaining unpaid for application by the Administrative Agent in accordance with the terms of the Credit Agreement; and

Third, any balance of such proceeds remaining after a Discharge of the Guaranteed Obligations shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive the same.

SECTION 6 THE COLLATERAL AGENT

6.1 Authority of Agent. (a) The Guarantor acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the other Guaranteed Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Guarantor, the Agent shall be conclusively presumed to be acting as agent for the Guaranteed Parties with full and valid authority so to act or refrain from acting, and Guarantor shall be under no obligation, or entitlement, to make any inquiry respecting such authority.

(b) The Agent has been appointed to act as Agent hereunder by the Lenders and, by their acceptance of the benefits hereof, the other Guaranteed Parties. The Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action, solely in accordance with this Agreement and the Credit Agreement. The provisions of the Credit Agreement relating to the Agent, including without limitation, the provisions relating to resignation or removal of the Agent (subject to Section 6.2(e) hereof) and the powers and duties and immunities of the Agent, are incorporated herein by this reference and shall survive any termination of the Credit Agreement.

6.2 Exculpation of the Agent. (a) The Agent shall not be responsible to any Guaranteed Party for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or for any representations, warranties, recitals or statements made herein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by the Agent to the Guaranteed Parties or by or on behalf of any Guaranteed Party to the Agent or any Guaranteed Party in connection with the transactions contemplated hereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Guaranteed Obligations, nor shall the Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the existence or possible existence of any Event of Default or to make any disclosures with respect to the foregoing.

(b) Neither the Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Guaranteed Parties for any action taken or omitted by the Agent under or in connection herewith except to the extent caused solely and proximately by the Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Agent shall be entitled to refrain from any act or the taking of any action in connection herewith or from the exercise of any power,

discretion or authority vested in it hereunder or thereunder unless and until the Agent shall have been instructed in respect thereof by the Controlling Parties and, upon such instruction, the Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such written instructions. Without prejudice to the generality of the foregoing, (i) the Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Guarantor and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Guaranteed Party shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder in accordance with the Credit Agreement.

(c) Without limiting the indemnification provisions of the Credit Agreement, each of the Guaranteed Parties not party to the Credit Agreement severally agrees to indemnify the Agent, to the extent that the Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in exercising its powers, rights and remedies or performing its duties hereunder or otherwise in its capacity as the Agent in any way relating to or arising out of this Agreement; provided, no such Guaranteed Party shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely and proximately from the Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts insufficiently indemnified against until such additional indemnity is furnished.

(d) No direction given to the Agent which imposes, or purports to impose, upon the Agent any obligation not set forth in or arising under this Agreement shall be binding upon the Agent.

(e) The Agent may resign at any time in accordance with Section 8.06 of the Credit Agreement. After the Agent's resignation in accordance with Section 8.06 of the Credit Agreement, the provisions of Section 6 hereof and of Article VIII of the Credit Agreement shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent. Upon the acceptance of any appointment as the Agent by a successor Agent in accordance with Section 8.06 of the Credit Agreement, the retiring Agent shall promptly transfer all Collateral within its possession or control to the possession or control of the successor Agent and shall execute and deliver such notices, instructions and assignments as may be necessary or desirable to transfer the rights of the Agent to the successor Agent.

6.3 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers under this Agreement by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. All of the rights,

benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 6 shall apply to any such sub-agent and to any of the Affiliates of the Agent and any such sub-agents, and shall apply to their respective activities as if such sub-agent and Affiliates were named herein in connection with the transactions contemplated hereby and by the Security Documents. Notwithstanding anything herein to the contrary, each sub-agent appointed by the Agent or Affiliate of the Agent or Affiliate of any such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Guaranteed Parties, and such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent or Affiliate acting in such capacity.

SECTION 7 MISCELLANEOUS

7.1 Amendments in Writing. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified except in accordance with Section 9.03 of the Credit Agreement.

7.2 Notices. All notices, requests and demands to or upon the Agent or the Guarantor hereunder shall be effected in the manner provided for in Section 9.09 of the Credit Agreement; provided that any such notice, request or demand to or upon the Guarantor shall be addressed to such Guarantor at its notice address as set forth below each party's name on the signature pages hereto, or at such other address as may be designated by such party in a written notice to all other parties.

7.3 No Waiver by Course of Conduct; Cumulative Remedies. No Guaranteed Party shall by any act (except by a written instrument pursuant to Section 7.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Guaranteed Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Guaranteed Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Guaranteed Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

7.4 Enforcement Expenses; Indemnification. (a) The Guarantor agrees to pay or reimburse each Guaranteed Party for all its costs and expenses incurred in collecting against such Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Guaranty and the other Loan Documents to which such Guarantor is a party,

including, without limitation, the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Guaranteed Party and of counsel to the Agent.

(a) The Guarantor agrees to pay, and save the Guaranteed Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the collateral securing the Guaranteed Obligations or in connection with any of the transactions contemplated by the Credit Agreement.

(b) The Guarantor agrees to pay, and to save the Guaranteed Parties (including all Indemnities pursuant to Section 9.02 of the Credit Agreement), harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Guaranty to the extent the Borrower would be required to do so pursuant to Section 9.02 of the Credit Agreement (it being understood and agreed that the indemnification obligations set forth in this Section 7.4(b) shall apply to the Guaranteed Parties to the same extent that they apply to the Agent and the Lenders under the Credit Agreement).

(c) The Guarantor agrees that the provisions of Section 2.13 of the Credit Agreement are hereby incorporated herein by reference, mutatis mutandis, and each Guaranteed Party shall be entitled to rely on each of them as if they were fully set forth herein.

(d) The agreements in this Section shall survive repayment of the Guaranteed Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

7.5 Successors and Assigns. This Guaranty shall be binding upon the successors and assigns of the Guarantor and shall inure to the benefit of the Guaranteed Parties and their successors and assigns; provided that Guarantor shall not assign, transfer or delegate any of its rights or obligations under this Guaranty without the prior written consent of the Agent and any such assignment, transfer or delegation without such consent shall be null and void.

7.6 Set-Off. The Guarantor hereby irrevocably authorizes each Guaranteed Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by the Guarantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such party to or for the credit or the account of such Guarantor, or any part thereof in such amounts as such Guaranteed Party may elect, against and on account of the obligations and liabilities of such Guarantor to such Guaranteed Party hereunder and claims of every nature and description of such Guaranteed Party against such Guarantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as such Guaranteed Party may elect, whether or not any Guaranteed Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Guaranteed Party exercising any right of set-

off shall notify such Guarantor promptly of any such set-off and the application made by such Guaranteed Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Guaranteed Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Guaranteed Party may have.

7.7 Counterparts. This Guaranty may be executed by one or more of the parties to this Guaranty on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Guaranty by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

7.8 Severability. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

7.9 Section Headings. The section headings and Table of Contents used in this Guaranty are for convenience of reference only and are not to affect the construction hereof or be taken in consideration in the interpretation hereof.

7.10 Integration; Conflicts. This Guaranty represents the agreement of the Guarantor, the Agent and the other Guaranteed Parties with respect to the subject matter hereof, and supercedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. There are no promises, undertakings, representations or warranties by the Agent or any other Guaranteed Party relative to the subject matter hereof not expressly set forth or referred to herein.

7.11 GOVERNING LAW. THIS GUARANTY AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS GUARANTY (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW.

7.12 Submission to Jurisdiction; Waivers. The Guarantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Guaranty (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general

jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, and of the United States of America for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Guaranty shall affect any right that any Guaranteed Party may otherwise have to bring any action or proceeding relating to this Guaranty against the Guarantor or any of its assets in the courts of any jurisdiction;

(d) waives to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Guaranty in any court referred to in paragraph (a) of this section (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in the manner provided in Section 9.16 of the Credit Agreement (and agrees that nothing in this Guaranty will affect the right of any party hereto to serve process in any other manner permitted by applicable law); and

(f) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

7.13 Acknowledgments. The Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Guaranty and the other Loan Documents to which it is a party;

(b) no Guaranteed Party has any fiduciary relationship with or duty to the Guarantor arising out of or in connection with this Guaranty or any of the other Loan Documents, and the relationship between the Guarantor, on the one hand, and the Guaranteed Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the parties hereto.

7.14 [Reserved].

7.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED

HEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

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IN WITNESS WHEREOF, each of the undersigned has caused this Guaranty Agreement to be duly executed and delivered as of the date first above written.

GUARANTOR:

ENERGY VAULT HOLDINGS, INC.

By: _____

Name:

Title:

[NOTICE ADDRESS]

AGENT:

JEFFERIES FINANCE LLC,
as Agent

By: _____

Name:

Title:

[NOTICE ADDRESS]

[Signature Page to Guaranty Agreement]

EXHIBIT C
FORM OF NOTE

\$[]

[] [], 20[]

For value received, the undersigned CALISTOGA RESILIENCY CENTER, LLC, a Delaware limited liability company ("Borrower"), hereby promises to pay to [] or its registered assigns ("Payee") the principal amount of _____ AND NO/100 DOLLARS (\$ _____) or, if less, the aggregate outstanding principal amount of the Advances (as defined in the Credit Agreement referred to below) made by the Payee to the Borrower, together with interest on the unpaid principal amount of the Advances from the date of such Advances until such principal amount is paid in full in cash, at such interest rates, and at such times, as are specified in the Credit Agreement (as defined below). The Borrower may make prepayments on this Note in accordance with the terms of the Credit Agreement.

This Note is one of the Notes referred to in, and is entitled to the benefits of, and is subject to the terms of, that certain Credit Agreement dated as of March 31, 2025 (as the same may be amended, restated, or modified from time to time, the "Credit Agreement"), among the Borrower, the lenders party thereto (the "Lenders"), and Jefferies Finance LLC, as administrative agent (in such capacity, the "Administrative Agent") and collateral agent (in such capacity, the "Collateral Agent") for such Lenders. Capitalized terms used in this Note that are defined in the Credit Agreement and not otherwise defined in this Note have the meanings assigned to such terms in the Credit Agreement. The Credit Agreement, among other things, (a) provides for the making of the Advances by the Payee to the Borrower in an aggregate amount not to exceed at any time outstanding the Dollar amount first above mentioned, the indebtedness of the Borrower resulting from each such Advance being evidenced by this Note, and (b) contains provisions for acceleration of the maturity of this Note upon the happening of certain events of default stated in the Credit Agreement and for optional and mandatory prepayments of principal prior to the maturity of this Note upon the terms and conditions specified in the Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to the Administrative Agent at the location or address specified in writing by the Administrative Agent to the Borrower in same day funds. The Payee shall record payments of principal made under this Note, but no failure of the Payee to make such recordings shall affect the Borrower's repayment obligations under this Note.

This Note is secured by the Security Instruments and guaranteed pursuant to the terms of the Guaranty. This Note is made expressly subject to the terms of Sections 9.10 and 9.11 of the Credit Agreement.

Except as specifically provided in the Credit Agreement, the Borrower hereby waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and any other notice of any kind. No failure to exercise, and no delay in exercising, any rights hereunder on the part of the holder of this Note shall operate as a waiver of such rights. In the event of any explicit or implicit conflict between any provision of this Note and any provision of the Credit Agreement, the terms of the Credit Agreement shall be controlling.

THIS NOTE AND THE OTHER LOAN DOCUMENTS AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REFERENCE TO ANY OTHER CONFLICTS OR CHOICE OF LAW PRINCIPLES THEREOF.

THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

BORROWER:

CALISTOGA RESILIENCY CENTER, LLC

By: _____

Name: _____

Title: _____

EXHIBIT D

FORM OF NOTICE OF BORROWING

[Date]

Jefferies Finance LLC,
as Administrative Agent
520 Madison Avenue
New York, NY 10022
Attention: Account Manager – Energy Vault
E-mail: JFIN.Admin@jefferies.com

Ladies and Gentlemen:

The undersigned, Calistoga Resiliency Center, LLC, a Delaware limited liability company (“Borrower”), (a) refers to the Credit Agreement dated as of March 31, 2025 (as amended, restated or otherwise modified from time to time, the “Credit Agreement”; the defined terms of which are used in this Notice of Borrowing as defined therein unless otherwise defined in this Notice of Borrowing), among the Borrower, the lenders party thereto from time to time (the “Lenders”), and Jefferies Finance LLC, as Administrative Agent and Collateral Agent, and (b) certifies that it is authorized to execute and deliver this Notice of Borrowing.

The Borrower hereby gives you irrevocable notice pursuant to Section 2.02(a) of the Credit Agreement that the undersigned hereby requests a Borrowing, and in connection with that request sets forth below the information relating to such Borrowing (the “Proposed Borrowing”) as required by Section 2.02(a) of the Credit Agreement:

- (a) The Business Day of the Proposed Borrowing is [] [], 20[].
- (b) The aggregate amount of the Proposed Borrowing is \$[].
- (c) Location and number of account to which proceeds are to be disbursed:

[Signature page follows.]

Very truly yours,

CALISTOGA RESILIENCY CENTER, LLC

By: _____

Name: _____

Title: _____

EXHIBIT E

[Reserved]

EXHIBIT F
FORM OF SECURITY AGREEMENT

COLLATERAL AGREEMENT

Dated as of March 31, 2025

THIS COLLATERAL AGREEMENT (this "Collateral Agreement") is executed and delivered as of the date above by CALISTOGA RESILIENCY CENTER, LLC, a Delaware limited liability company (the "Pledgor"), in favor of JEFFERIES FINANCE LLC, ("Jefferies"), as collateral agent (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent") for the lenders (the "Lenders") from time to time parties to the Credit Agreement (as defined below) and the other Secured Parties (as defined in the Credit Agreement).

Reference is made to that certain Credit Agreement, dated as of the date hereof, by and among the Pledgor, as the borrower, the Lenders from time to time party thereto, Jefferies, as administrative agent and collateral agent (as amended, restated, amended and restated, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement, or if not defined therein, in the UCC.

1. Acknowledgement. The Pledgor hereby acknowledges and confirms that it is receiving a direct or indirect benefit from the Advances under the Credit Agreement, and that the grant of the security interest in the Collateral (as defined below) hereunder and the execution of this Collateral Agreement is a condition to the extension of any Advances.
2. Pledge. In order to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations, the Pledgor hereby grants to the Collateral Agent and pledges, charges, mortgages, assigns by way of security and creates a security interest in, all of its right, title and interest, in, to and under the following, whether now existing or hereafter acquired or arising and wherever located, for the benefit of the Secured Parties (collectively, the "Collateral"):
 - (a) deposit account number 174669-002, established and maintained at Wilmington Trust, National Association (the "Depository Bank"), as depository bank, and any extensions or renewals thereof, if the account is one which may be extended or renewed, and any successor, renumbered or substitute accounts (the "Deposit Account");
 - (c) all of the Pledgor's right, title, and interest (whether now existing or hereafter created or arising) in and to the Deposit Account and all sums or other property now or at any time hereafter on deposit therein, credited thereto, or payable thereon; and
 - (f) all proceeds and products of the foregoing, and all instruments, documents, certificates, and other writings evidencing the foregoing or held therein.
3. Representations and Warranties. The Pledgor hereby represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that:
 - (a) Subject to the Collateral Agent's rights hereunder and under that certain Blocked Deposit Account Control Agreement, dated as of the date hereof, by and among the Pledgor, the Collateral Agent and the Depository Bank (the "Control Agreement") with respect to

the Deposit Account, the Pledgor is the sole owner of the Deposit Account and has authority to execute and deliver this Collateral Agreement.

(b) Upon the execution and delivery of this Collateral Agreement, together with the Control Agreement, the Collateral Agent will have a perfected security interest (for the benefit of the Secured Parties) and “control” (within the meaning of Article 9 of the Uniform Commercial Code as in effect in the State of New York from time to time (the “UCC”)) of the Deposit Account.

4. Remedies.

- (a) The Collateral Agent and the Secured Parties shall have all rights, remedies and recourse granted in the Loan Documents and any other instruments executed to provide security for or in connection with the payment and performance of the Obligations or existing at common law or equity (including those granted by the UCC, and the right of offset).
- (b) Without limiting the generality of Section 4(a), if an Event of Default shall occur and be continuing and unless and until the Commitments have been terminated and all Obligations (other than any contingent reimbursement and indemnification obligations in respect of which no claim for payment has been made) have been paid in full in cash (such date, the “Termination Date”), the Collateral Agent, subject to the limitations set forth in the Loan Documents without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances (i) demand payment and performance of all due and payable Obligations from the funds in or credited to the Deposit Account; (ii) withdraw, collect, and receive any and all funds on deposit in or payable to the Deposit Account; (iii) withdraw funds from the Deposit Account and apply all or any portion of the funds in or credited to the Deposit Account to the Obligations; and (iv) surrender or present for notation of withdrawal the passbook, certificate, or other documents issued to the Pledgor in connection with the Deposit Account;
- (c) To the extent permitted by any Requirement of Law, the Pledgor waives all claims, damages and demands it may acquire against the Collateral Agent arising out of the exercise by the Collateral Agent of any of its rights hereunder.
- (d) Notwithstanding a foreclosure upon any of the Collateral or the exercise of any other remedy by the Collateral Agent on behalf of the Secured Parties, upon the occurrence and during the continuance of an Event of Default and until the Termination Date has occurred: (i) the Pledgor shall not be subrogated thereby to any rights of the Collateral Agent for the benefit of the Secured Parties against the Collateral or any other security for the Obligations, or the Pledgor, or any property of the Pledgor; (ii) the Pledgor shall not be deemed to be the owner of any interest in the Obligations; and (iii) the Pledgor shall not exercise any rights or remedies

with respect to the Pledgor or the Collateral or any other security for the Obligations or any of them or the property of the Pledgor except to the extent expressly set forth in the Credit Agreement or herein, or unless otherwise requested in writing to do so by the Collateral Agent.

- (e) The remedies given to the Collateral Agent on behalf of the Secured Parties hereunder (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against the Pledgor and any other party obligated under the Obligations, or against the Collateral, or any of such Collateral, or any other security for the Obligations, or any of them, at the sole discretion of the Collateral Agent, on behalf of the Secured Parties; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by the Pledgor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; (iv) are intended to be and shall be, non-exclusive; and (v) are cumulative and in addition to any and all other rights which the Collateral Agent on behalf of the Secured Parties may have against the Pledgor or any other Person, at law or in equity, including exoneration and subrogation, or by virtue of any other agreement.

5. Power of Attorney. The Pledgor hereby irrevocably constitutes and appoints the Collateral Agent with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, from time to time in the Collateral Agent's reasonable discretion and subject to the last paragraph of this Section 5, for the purpose of carrying out the terms of this Collateral Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Collateral Agreement, and, without limiting the generality of the foregoing, the Pledgor hereby gives the Collateral Agent the power and right, on behalf of the Pledgor, without notice to or assent by the Pledgor, to do the following:

- (a) in the name of the Pledgor or its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of monies due under or with respect to any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise reasonably deemed appropriate by the Collateral Agent for the purpose of collecting any and all such monies due under or with respect to any Collateral whenever payable;
- (b) to pay or discharge taxes and Liens levied or placed on or threatened against the Collateral;
- (c) to execute, in connection with any sale provided for in Section 4, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral;
- (d) to commence and prosecute any claims, suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral due to the

Pledgor or any portion thereof and to enforce any other right in respect of any Collateral;

- (e) to defend any claim, suit, action or proceeding brought against the Pledgor with respect to any Collateral;
- (f) to settle, compromise or adjust any such claim, suit, action or proceeding with respect to the Collateral, and, in connection therewith to give such discharges or releases as the Collateral Agent may deem appropriate;
- (g) in the name of the Pledgor or its own name, or otherwise, to execute and deliver all documents and do all things that the Collateral Agent considers to be reasonably required to carry out the acts and exercise the powers set forth in Sections 4(b); and
- (h) generally, to sell, transfer, pledge, charge, mortgage, assign by way of security and make any agreement with respect to or otherwise deal with any of the Collateral in a manner provided for herein as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and the Pledgor's reasonable expense, at any time, or from time to time, all acts and things which the Collateral Agent reasonably deems necessary to protect, perfect, preserve or realize upon the Collateral and the Collateral Agent's Liens thereon and to effect the intent of this Collateral Agreement, all as fully and effectively as the Pledgor might do.

Notwithstanding anything in this Section 5 to the contrary, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 5 unless an Event of Default has occurred and is continuing. The Pledgor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable unless and until the Termination Date has occurred.

- 6. Pledgor's Receipt of Funds. Should any funds required by the Credit Agreement or by this Collateral Agreement to be deposited into the Deposit Account be received by the Pledgor, such funds shall immediately upon receipt become subject to the Lien hereof and while in the hands of the Pledgor be segregated from all other funds of the Pledgor and be held in trust for the Collateral Agent, for the benefit of the Secured Parties. The Pledgor shall have absolutely no dominion or control over such funds except to (a) immediately deposit such funds into the Deposit Account; and (b) direct disposition of the funds in the Blocked Account pursuant to Section 2.02 of the Credit Agreement upon satisfaction of the conditions precedent set forth in Section 3.02 in the Credit Agreement.
- 7. Covenants. The Pledgor hereby agrees that it shall not (a) close the Deposit Account without the prior written consent of the Collateral Agent, or (b) establish any "controlled balance accounts" or "linked accounts" with respect to the Deposit Account without the prior written consent of the Collateral Agent. The Pledgor shall maintain the Deposit Account only with financial institutions that have agreed to comply with entitlement orders and instructions issued or originated by the Collateral Agent without further consent of the

Pledgor, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent.

8. Liability. Neither the Collateral Agent nor the Secured Parties shall be liable or responsible in any way for (a) any depreciation in the value of the Collateral nor have any duty or responsibility whatsoever to take any steps to preserve any rights of the Pledgor in the Collateral or (b) any loss of interest on or any penalty or charge assessed against funds in, payable on, or credited to the Deposit Account as a result of the Collateral Agent or any Secured Party exercising any of its rights or remedies under this Collateral Agreement, except, in each case, for gross negligence or willful misconduct by the Collateral Agent or such Secured Party.
9. Notices. All notices and other communications to or upon the Collateral Agent or the Pledgor under this Collateral Agreement shall be effected in the manner provided for in Section 9.09 of the Credit Agreement.
10. Successor Collateral Agent; Required Lenders. Reference is hereby made to Article VIII of the Credit Agreement for the terms and conditions upon which a successor Collateral Agent hereunder may be appointed. Wherever the words "*Collateral Agent*" are used herein, the same shall mean the Collateral Agent named in the first paragraph of this Collateral Agreement or the successor Collateral Agent at the time in question. In the event there is no Person acting in the capacity of the Collateral Agent, the Required Lenders may exercise all rights of the Collateral Agent hereunder.
11. Financing Statements. Pursuant to any applicable law, the Pledgor authorizes the Collateral Agent to file, transmit, communicate or record, as applicable, financing statements, amendments thereto and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Collateral Agent determines appropriate to perfect the security interests of the Collateral Agent under this Collateral Agreement. The Pledgor authorizes the Collateral Agent (i) to use any description which reasonably approximates the description of the Collateral contained in this Collateral Agreement in any such financing statement and (ii) to use any information required by part 5 of Article 9 of the New York UCC for the sufficiency or filing office acceptance. The Pledgor hereby ratifies and authorizes the filing by the Collateral Agent of any and all financing statements or amendments in any jurisdiction with respect to the Collateral made prior to the date hereof.
12. Successors and Assigns. This Collateral Agreement shall be binding upon the successors and assigns of the Pledgor and shall inure to the benefit of the Secured Parties and their successors and assigns; provided that (a) the Pledgor may not assign, transfer or delegate any of its rights or obligations under this Collateral Agreement without the prior written consent of the Collateral Agent and any such assignment, transfer or delegation without such consent shall be null and void and (b) the Collateral Agent shall only transfer or assign its rights under this Collateral Agreement in connection with a resignation or removal of such Person from its capacity as "Collateral Agent" in accordance with the terms of this Collateral Agreement and each other Loan Document.

13. Multiple Counterparts. This Collateral Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective when it shall have been executed by the Pledgor and the Collateral Agent and when the Collateral Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed signature page to this Collateral Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Collateral Agreement. The words "execution", "execute", "signed", "signature", and words of like import in or related to any document signed or to be signed in connection with this Collateral Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

14. Governing Law. THE VALIDITY OF THIS COLLATERAL AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

15. Choice of Forum; Consent to Service of Process and Jurisdiction; Waiver of Trial by Jury.

(a) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS COLLATERAL AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; *PROVIDED*, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE COLLATERAL AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE THE COLLATERAL AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE PLEDGOR, THE COLLATERAL AGENT AND EACH OTHER SECURED PARTY WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY

RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 15.

- (b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS COLLATERAL AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS COLLATERAL AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS COLLATERAL AGREEMENT AGAINST ANY OTHER PARTY HERETO OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.
- (c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLEDGOR, THE COLLATERAL AGENT, AND EACH OTHER SECURED PARTY HEREBY WAIVES THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS COLLATERAL AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). THE PLEDGOR, THE COLLATERAL AGENT, AND EACH OTHER SECURED PARTY REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS COLLATERAL AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.
- (d) Each party to this Collateral Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.09 of the Credit Agreement. Nothing in this Collateral Agreement will affect the right of any party to this Collateral Agreement to serve process in any other manner permitted by law.

16. Waiver; Etc.

- (a) No delay or omission on the part of the Collateral Agent or the Secured Parties in exercising any right hereunder shall operate as a waiver of any such right or any other right. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion.
 - (b) The Collateral Agent's and each other Secured Party's rights hereunder shall not be released, diminished, impaired, reduced or adversely affected by: (i) the renewal, extension, modification, amendment or alteration of any Loan Document or any related document or instrument in accordance with the terms thereof; (ii) any adjustment, indulgence, delay, omission, forbearance or compromise that might be granted or given by the Collateral Agent or the Secured Parties to any primary or secondary obligor or in connection with any security for the Obligations; (iii) any full or partial release of any of the foregoing (except to the extent released pursuant to the terms and conditions set forth in the Loan Documents); or (iv) notice of any of the foregoing.
17. Term of Agreement. On the Termination Date, (a) this Collateral Agreement shall automatically terminate and be of no further force or effect, (b) the Collateral shall automatically revert to the Pledgor with no further action on the part of the Pledgor, and (c) the Collateral Agent, on behalf of the Secured Parties, (i) shall promptly provide the Pledgor, at its sole cost and expense, proper instruments acknowledging the termination of this Collateral Agreement and all releases or other documents reasonably necessary or desirable for the release of the Collateral, and (ii) authorizes the Pledgor to prepare and file termination statements, in form and substance reasonably satisfactory to Collateral Agent, terminating all filings filed of record in connection with this Collateral Agreement.
18. Reinstatement. The Pledgor agrees that this Collateral Agreement and the grant of security interest to the Collateral Agent in the Collateral hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy, insolvency, dissolution, liquidation or reorganization of the Pledgor, any guarantor of the Obligations or any other grantor of collateral securing the Obligations or otherwise.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Collateral Agreement to be duly executed as of the day and year first above written.

PLEDGOR:

CALISTOGA RESILIENCY CENTER, LLC

By: _____

Name:

Title:

[Signature Page to Collateral Agreement]

ACCEPTED AND AGREED BY:

COLLATERAL AGENT:

JEFFERIES FINANCE LLC

By: _____

Name:

Title:

[Signature Page to Collateral Agreement]

EXHIBIT G-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 31, 2025 (as amended, restated, amended and restated, refinanced, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Calistoga Resiliency Center, LLC, a Delaware limited liability company (the "Borrower"), the lenders party thereto from time to time, and Jefferies Finance LLC, as administrative agent (in such capacity, the "Administrative Agent") and collateral agent.

Pursuant to the provisions of Section 2.13(f)(ii)(B) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Advance(s) (as well as any Note(s) evidencing such Advance(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "10 percent shareholder" of the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing and deliver promptly to the Borrower and the Administrative Agent an updated certificate or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____

G-1-1

EXHIBIT G-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 31, 2025 (as amended, restated, amended and restated, refinanced, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Calistoga Resiliency Center, LLC, a Delaware limited liability company (the "Borrower"), the lenders party thereto from time to time, and Jefferies Finance LLC, as administrative agent (in such capacity, the "Administrative Agent") and collateral agent.

Pursuant to the provisions of Section 2.13(f)(ii)(B) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "10 percent shareholder" of the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code, and (iv) it is not a "controlled foreign corporation" related to the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform such Lender in writing and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its inability to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name: _____
Title: _____
Date: _____

G-2-1

EXHIBIT G-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 31, 2025 (as amended, restated, amended and restated, refinanced, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Calistoga Resiliency Center, LLC, a Delaware limited liability company (the "Borrower"), the lenders party thereto from time to time, and Jefferies Finance LLC, as administrative agent (in such capacity, the "Administrative Agent") and collateral agent.

Pursuant to the provisions of Section 2.13(f)(ii)(B) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "10 percent shareholder" of the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing and deliver promptly to the Borrower and the Administrative Agent an updated certificate or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify such Lender in writing and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its inability to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT G-4

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 31, 2025 (as amended, restated, amended and restated, refinanced, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Calistoga Resiliency Center, LLC, a Delaware limited liability company (the “Borrower”), the lenders party thereto from time to time, and Jefferies Finance LLC, as administrative agent (in such capacity, the “Administrative Agent”) and collateral agent.

Pursuant to the provisions of Section 2.13(f)(ii)(B) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Advance(s) (as well as any Note(s) evidencing such Advance(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Advance(s) (as well as any Note(s) evidencing such Advance(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10 percent shareholder” of the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower (or if the Borrower is a disregarded entity, its regarded owner for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing and deliver promptly to the Borrower and the Administrative Agent an updated certificate or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT H

FORM OF SOLVENCY CERTIFICATE

**SOLVENCY CERTIFICATE
OF
THE BORROWER**

Pursuant to the Credit Agreement dated as of March 31, 2025, by and among Calistoga Resiliency Center, LLC, a Delaware limited liability company (the “Borrower”), the lenders party thereto from time to time, and Jefferies Finance LLC, as the administrative agent and collateral agent, the undersigned hereby certifies, solely in such undersigned’s capacity as Chief Financial Officer of the Borrower, and not individually, as follows:

As of the date hereof, after giving effect to the consummation of the transactions contemplated by the Credit Agreement, including the making of the Advances under the Credit Agreement on the date hereof, and after giving effect to the application of the proceeds of such Advances:

- a. The fair value of the assets of the Borrower exceeds its liabilities, contingent or otherwise;
- b. The present fair saleable value of the assets of the Borrower is greater than the amount that will be required to pay the probable liability of its debts as such debts become absolute and matured;
- c. The Borrower is able to pay its debts and liabilities, contingent or otherwise, as such liabilities mature in the ordinary course of business; and
- d. The Borrower is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

For purposes of this Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability in light of the facts and circumstances as they currently exist. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

The undersigned is familiar with the business and financial position of the Borrower. In reaching the conclusions set forth in this Certificate, the undersigned has made such other investigations and inquiries as the undersigned has deemed appropriate, having taken into account the nature of the particular business anticipated to be conducted by the Borrower after consummation of the transactions contemplated by the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate in such undersigned's capacity as Chief Financial Officer of the Borrower, on behalf of the Borrower, and not individually, as of the date first stated above.

CALISTOGA RESILIENCY CENTER, LLC

By: _____

Name:

Title:

EXHIBIT I
FORM OF MORTGAGE

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**W&S DRAFT
3/13/2025**

**Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Attention: Jason Goldstein, Esq.**

**APN: 011-260-002
011-260-003**

CALISTOGA RESILIENCY CENTER, LLC, as grantor

to

CHICAGO TITLE COMPANY, as trustee

for the benefit of

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent, as beneficiary

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF
RENTS AND LEASES, AND FIXTURE FILING**

Dated: as of [●], 2025
Location: 204 Washington Street
Municipality: Calistoga
County: Napa
State: California

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this “**Security Instrument**”) is made as of [●], 2025, by **CALISTOGA RESILIENCY CENTER, LLC**, a Delaware limited liability company, having an office located at 4360 Park Terrace Drive, Suite 100, Westlake Village, California 91361, as grantor (together with its permitted successors and assigns, “**Grantor**”), as grantor, to **CHICAGO TITLE COMPANY**, a California corporation, having an office located at [●], as trustee (together with its successors and assigns, “**Trustee**”), as trustee, for the benefit of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, not in its individual capacity but solely in its capacity as collateral agent for each of the Secured Parties (as defined in the Note Purchase Agreement referred to below), with a mailing address at [●] (together with its successors and assigns in such capacity, “**Agent**”), as beneficiary. All capitalized terms not defined herein shall have the respective meanings set forth in the Note Purchase Agreement (defined below).

RECITALS:

Grantor is entering into that certain Note Purchase Agreement, dated as of [●], 2025 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, the “**Note Purchase Agreement**”), whereby the Grantor has authorized the issuance and sale of \$[●] aggregate principal amount of its [●]% Senior Notes due [●] (such notes, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the “**Notes**”) and agreed to issue and sell to each Purchaser (as defined in the Note Purchase Agreement) and each Purchaser has agreed to purchase from the Company, the Notes (as defined in the Note Purchase Agreement) in the principal amount specified opposite such Purchaser’s name in the Purchaser Schedule attached thereto, subject to conditions set forth in the Note Purchase Agreement.

Grantor has agreed to secure all of its Indebtedness (as defined in the Note Purchase Agreement) by granting to Agent a first priority lien on the Collateral (as defined in the Note Purchase Agreement), and pursuant to the Financing Documents (as defined in the Note Purchase Agreement), Grantor shall execute and deliver this Security Instrument for the benefit of Agent.

Article 1 - GRANTS OF SECURITY

Section 1.1. Property Mortgaged. Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Trustee, its successors and assigns, for the benefit of Agent and its successors and assigns all of its right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the “**Property**”):

(a) Land. A leasehold interest created by and contained in the Ground Lease (as defined below) in the real property described in Exhibit A attached hereto and made a part hereof (collectively, the “**Land**”);

(b) Intentionally Deleted;

(c) Ground Lease. Grantor's interest in that certain Site Lease Agreement dated as of July 18, 2023 between The City of Calistoga, a municipal corporation, as lessor ("**Ground Lessor**"), and Grantor, as lessee (the "**Ground Lease**") and the leasehold estates created thereby in the real property or air rights leased thereby, being more particularly described in Exhibit A attached hereto and made a part hereof (the "**Leasehold Estate**");

(d) Assignments/Modifications. All assignments, modifications, extensions and renewals of the Ground Lease and all credits, deposits, options, privileges and rights of Grantor as tenant under the Ground Lease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Ground Lease for a succeeding term or terms, and also including all the right, title, claim or demand whatsoever of Grantor either in law or in equity, in possession or expectancy, of, in and to Grantor's right, as tenant under the Ground Lease, to elect under Section 365(h)(1) of the Bankruptcy Code to terminate or treat the Ground Lease as terminated in the event (i) of the bankruptcy, reorganization or insolvency of the Ground Lessor, and (ii) the rejection of the Ground Lease by Ground Lessor, as debtor in possession, or by a trustee for Ground Lessor, pursuant to Section 365 of the Bankruptcy Code;

(e) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, to the extent owned by Grantor (collectively, the "**Improvements**");

(f) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Leasehold Estate and the Improvements, including, but not limited to, those arising under and by virtue of the Ground Lease, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the extent of Grantor's interests therein, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Leasehold Estate and the Improvements, including, but not limited to, those arising under and by virtue of the Ground Lease, and every part and parcel thereof, with the appurtenances thereto;

(g) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Grantor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted

and enacted by the state or states where any of the Property is located (the “**Uniform Commercial Code**”), and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Leasehold Estate and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Grantor of any petition for relief under any Creditors Rights Laws (hereinafter defined) (collectively, the “**Leases**”) and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Grantor of any petition for relief under any Creditors Rights Laws (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt. “**Creditors Rights Laws**” shall mean applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors’ rights generally and to general principles of equity;

(i) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, to the extent of Grantor’s interest therein (collectively, the “**Insurance Proceeds**”);

(j) Condemnation Awards. All condemnation awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property, to the extent of Grantor’s interest therein (collectively, the “**Awards**”);

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction, to the extent of Grantor's interest therein;

(l) Intentionally Deleted.

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Leasehold Estate and any part thereof and any Improvements or any business or activity conducted on the Leasehold Estate and any part thereof and all right, title and interest of Grantor therein and thereunder, to the extent owned by Grantor and assignable to Grantee, including, without limitation, the right, upon the happening of any Event of Default hereunder, to receive and collect any sums payable to Grantor thereunder;

(n) Intentionally Deleted.

(o) Accounts. All reserves, escrows and deposit accounts maintained by Grantor with respect to the Property, including without limitation, the Accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (o) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims.

(q) Other Rights. Any and all other rights of Grantor in and to the items set forth in subsections (a) through (p) above.

Section 1.2. ASSIGNMENT OF RENTS. Grantor hereby absolutely and unconditionally assigns to Agent and Trustee all of Grantor's right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Note Purchase Agreement and Section 8.1(h) of this Security Instrument, Agent grants to Grantor a revocable license to (i) collect, receive, use and enjoy the Rents and Grantor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Agent for use in the payment of such sums, and (ii) enforce the terms of the Leases.

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Agent, as security for the Obligations (hereinafter defined), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.

Section 1.4. FIXTURE FILING. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Agent) as set forth in the first paragraph of this Security Instrument. Debtor’s (Grantor’s) organization identification number is [●].

Section 1.5. CONDITIONS TO GRANT. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Agent and to the use and benefit of Agent and Trustee and their successors and assigns, forever, subject, however to the Permitted Liens; IN TRUST, WITH POWER OF SALE, to secure payment to Agent of the Debt at the time and in the manner provided for its payment in the Notes and in the Note Purchase Agreement; PROVIDED, HOWEVER, these presents are upon the express condition that, if Agent shall be well and truly paid the Debt (other than contingent obligations for indemnification, expense reimbursement, tax gross up or yield protection or similar matters as to which no claim has been made) at the time and in the manner provided the Note Purchase Agreement and this Security Instrument, if Grantor shall well and truly perform the Other Obligations (as defined below) as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Financing Documents (other than contingent obligations for indemnification, expense reimbursement, tax gross up or yield protection or similar matters as to which no claim has been made), these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1. DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the outstanding principal amount set forth in, and evidenced by, the Notes together with all interest accrued and unpaid and all other sums due to Agent and the Secured Parties in respect of the Notes under the Note Purchase Agreement, this Security Instrument or any of the other Financing Documents (collectively, the “Debt”).

Section 2.2. OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the “Other Obligations”): (a) all other obligations of Grantor contained herein; (b) each obligation of Grantor contained in the Financing Documents; and (c) each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Financing Documents.

Section 2.3. DEBT AND OTHER OBLIGATIONS. Grantor’s obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the “Obligations.”

Section 2.4. PAYMENT OF DEBT. Grantor will pay the Debt at the time and in the manner provided in the Notes and the Note Purchase Agreement and this Security Instrument.

Section 2.5. INCORPORATION BY REFERENCE. All of the covenants, conditions and agreements contained in (a) the Note Purchase Agreement, and (b) any and all of the other Financing Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 3 - PROPERTY COVENANTS

Grantor covenants and agrees that:

Section 3.1. INSURANCE. Grantor shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Note Purchase Agreement.

Section 3.2. TAXES AND OTHER CHARGES. Grantor shall pay all real estate and personal property taxes, assessments, water rates or sewer rents (collectively "**Taxes**"), ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property (collectively, "**Other Charges**"), now or hereafter levied or assessed or imposed against the Property or any part thereof in accordance with the Note Purchase Agreement.

Section 3.3. LEASES. Grantor shall not (and shall not permit any other applicable Person to) enter in any Leases for all or any portion of the Property unless in accordance with the provisions of the Note Purchase Agreement.

Section 3.4. WARRANTY OF TITLE. Grantor has good, indefeasible, marketable and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Grantor possesses an unencumbered Leasehold Estate in the Land and the Improvements except for the Permitted Liens (as defined in the Note Purchase Agreement), such other liens as are permitted pursuant to the Financing Documents and the liens created thereby. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, pursuant to the Uniform Commercial Code of the State of California and in the state of Grantor's organization, will create (a) a legal, valid, and perfected lien on the Property, subject only to Permitted Encumbrances and the liens created by the Financing Documents and (b) a legal, valid, and perfected security interests in and to, and legal, valid, and perfected collateral assignments of, all personalty (including the Leases) which may be perfected by the recording of this Security Instrument or such Uniform Commercial Code financing statements, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other liens as are permitted pursuant to the Financing Documents and the liens created thereby. Grantor shall forever warrant, defend and preserve its interest in the Leasehold Estate and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Agent against the claims of all Persons whomsoever, other than the holders of Permitted Encumbrances.

Section 3.5. PAYMENT FOR LABOR AND MATERIALS. Subject to Grantor's right to contest any Work Charge (defined herein) pursuant to the terms of the Note Purchase Agreement, Grantor will promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and

specifically fabricated materials incurred in connection with the Property (each, a “**Work Charge**”) and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

Article 4 - FURTHER ASSURANCES

Section 4.1. COMPLIANCE WITH NOTE PURCHASE AGREEMENT. Grantor shall comply with all covenants set forth in the Note Purchase Agreement relating to acts or other further assurances to be made on the part of Grantor in order to protect and perfect the lien or security interest hereof upon, and in the interest of Agent in, the Property.

Section 4.2. AUTHORIZATION TO FILE FINANCING STATEMENTS. Grantor hereby authorizes Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property and as necessary or required in connection herewith. For purposes of such filings, Grantor agrees to furnish any information requested by Agent promptly upon request by Agent. Grantor also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. During the continuance of an Event of Default, Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent of Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor’s own name to execute in Grantor’s name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Grantor’s authorization above is not sufficient and Grantor fails or refuses to promptly execute such documents. This power of attorney is a power coupled with an interest and shall be irrevocable.

Article 5 - DUE ON SALE/ENCUMBRANCE

Section 5.1. NO SALE/ENCUMBRANCE. Except in accordance with the Financing Documents, Grantor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof that would violate the terms of the Note Purchase Agreement.

Article 6 - PREPAYMENT; RELEASE OF PROPERTY

Section 6.1. PREPAYMENT. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Notes and the Note Purchase Agreement.

Section 6.2. RELEASE OF PROPERTY. Grantor shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with the terms and conditions of the Note Purchase Agreement, if any.

Article 7 - DEFAULT

Section 7.1. EVENT OF DEFAULT. The term “**Event of Default**” as used in this Security Instrument shall have the meaning assigned to such term in the Note Purchase Agreement.

Article 8 - RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1. REMEDIES. Upon the occurrence and during the continuance of any Event of Default, subject to, and in accordance with, the terms of the Note Purchase Agreement and the Financing Documents, Grantor agrees that Agent (acting at the direction of the Required Holders) may or acting by or through Trustee may take such action, without notice or demand, other than notices required by applicable law and/or the Note Purchase Agreement, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Agent or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent or Trustee:

- (a) declare the entire unpaid Debt then outstanding to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument in accordance with applicable law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Financing Documents;
- (f) recover judgment on the Debt either before, during or after any proceedings for the enforcement of this Security Instrument or any of the Financing Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice to Grantor, which notice Grantor expressly waives, and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor, any guarantor or indemnitor of the Notes under the Notes or Note Purchase Agreement or any other Person liable for the payment of the Debt and whose appointment Grantor expressly consents to take possession of and to operate the Property and to collect the Rents and to otherwise protect and preserve the Property;

(h) the license granted to Grantor under Section 1.2 hereof shall automatically be revoked and Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Agent or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable, documented and out-of-pocket attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent, its counsel, agents and employees;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Agent in accordance with the terms of the Note Purchase Agreement, this Security Instrument or any other Financing Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Notes; (iv) amortization of the unpaid principal balance of the Notes; (v) all other sums payable pursuant to the Note Purchase Agreement, this Security Instrument and the other Financing Documents, including without limitation advances made by Agent pursuant to the terms of this Security Instrument;

(j) surrender the insurance policies maintained pursuant to the Note Purchase Agreement, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Debt in such priority and proportion as Agent in its discretion shall deem proper, and in connection therewith, Grantor hereby appoints Agent as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such insurance premiums;

(k) apply the undisbursed balance of any deposit made by Grantor with Agent in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Agent shall deem to be appropriate in its discretion; and/or

(l) pursue such other remedies as Agent may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Any determination as to whether an action may be necessary, property or appropriate shall be made by the Required Holders.

Section 8.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Agent pursuant to this Security Instrument or the other Financing Documents, may be applied by Agent to the payment of the Debt in such priority and proportions as set forth in the Note Purchase Agreement and the Financing Documents.

Section 8.3. RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default, Agent may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make any payment or do any act required of Grantor hereunder in such manner and to such extent as Agent may deem necessary to protect the security hereof. Agent or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the documented and out-of-pocket cost and expense thereof (including documented and out-of-pocket attorneys' fees to the extent permitted by applicable law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Agent upon demand. All such costs and expenses incurred by Agent in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the default rate specified in the Notes and the Note Purchase Agreement (the "**Default Rate**"), for the period commencing three (3) Business Days after notice from Agent that such cost or expense was incurred to the date of payment to Agent. All such costs and expenses incurred by Agent or Trustee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Financing Documents and shall be immediately due and payable upon demand by Agent therefor.

Section 8.4. ACTIONS AND PROCEEDINGS. During the continuance of any Event of Default, Agent or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Agent in its discretion, decides should be brought to protect its interest in the Property.

Section 8.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Agent shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Agent thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

Section 8.6. OTHER RIGHTS, ETC. (a) The failure of Agent or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Agent or Trustee to comply with any request of Grantor or any guarantor or indemnitor of the Notes under the Note Purchase Agreement to take any action to foreclose this Security

Instrument or otherwise enforce any of the provisions hereof or of the other Financing Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Agent extending the time of payment or otherwise modifying or supplementing the terms of the Note Purchase Agreement, this Security Instrument or the other Financing Documents. It is agreed that the risk of loss or damage to the Property is on Grantor, and Agent shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Note Purchase Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Agent shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Agent's possession.

(b) Agent may resort for the payment of the Debt to any other security held by Agent in such order and manner as Agent, in its discretion, may elect. Agent or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Agent or Trustee thereafter to foreclose this Security Instrument. The rights of Agent or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others, to the extent permitted by law. No act of Agent or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, to the extent permitted by law. Neither Agent nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.7. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. In addition to the provisions of Section 6.2 hereof, Agent (acting at the direction of the Required Holders) may release any other portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8. RIGHT OF ENTRY. Upon reasonable notice to Grantor, Agent and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.9. BANKRUPTCY. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. If there shall be filed by or against Grantor a petition under the Bankruptcy Code and Grantor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code (defined below), then Grantor shall give Agent not less than ten (10) business days' prior notice of the date on which Grantor shall apply to the bankruptcy court for authority to reject the Lease. Agent (acting at the direction of the

Required Holders) shall have the right, but not the obligation, to serve upon Grantor within such ten-day period a notice stating that (i) Agent demands that Grantor assume and assign the Lease to Agent pursuant to Section 365 of the Bankruptcy Code and (ii) Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Agent serves upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Agent of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.10. SUBROGATION. If any or all of the proceeds of the Debt have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Agent shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Agent and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of the Other Obligations.

Article 9 - WAIVERS

Section 9.1. MARSHALLING AND OTHER MATTERS. Grantor hereby waives, to the extent permitted by applicable law, the benefit of all applicable law now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable law.

Section 9.2. WAIVER OF NOTICE. Grantor shall not be entitled to any notices of any nature whatsoever from Agent or Trustee except with respect to matters for which this Security Instrument, the Note Purchase Agreement or any other Financing Document specifically and expressly provides for the giving of notice by Agent or Trustee to Grantor and except with respect to matters for which Grantor is not permitted by applicable law to waive its right to receive notice, Grantor hereby expressly waives the right to receive any notice from Agent or Trustee with respect to any matter for which the Note Purchase Agreement, this Security Instrument or any other Financing Document does not specifically and expressly provide for the giving of notice by Agent or Trustee to Grantor.

Section 9.3. SOLE DISCRETION OF AGENT. Except as provided in the Note Purchase Agreement, whenever pursuant to this Security Instrument, Agent exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Agent, the decision of Agent (acting at the direction of the Required Holders) to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole (but reasonable) discretion of the Required Holders (acting through the Agent) and shall be final and conclusive.

Section 9.4. WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND AGENT (BY ITS ACCEPTANCE HEREOF) EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE FINANCING DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR AND AGENT, AND IS INTENDED TO ENCOMPASS TO THE EXTENT PERMITTED BY APPLICABLE LAW INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF AGENT AND GRANTOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR AND AGENT.

Section 9.5. WAIVER OF FORECLOSURE DEFENSE. Grantor hereby waives any defense Grantor might assert or have by reason of Agent's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Agent.

Article 10 - NOTICES

Section 10.1. NOTICES. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Note Purchase Agreement.

Notices to the Trustee shall be sent as follows:

- [•]
- [•]
- [•]

Article 11 - APPLICABLE LAW

Section 11.1. GOVERNING LAW. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

Section 11.2. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 12 - DEFINITIONS

Section 12.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may

be used interchangeably in singular or plural form and the word "Grantor" shall mean "each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Secured Parties" shall mean "each Secured Party any of a Secured Party's successors and assigns, as permitted under the Notes, the Note Purchase Agreement or any of the Financing Documents"; the word "Note" shall mean "each promissory note issued and sold pursuant to Section 2 or Section 13 of the Note Purchase Agreement and any other evidence of indebtedness secured by the Note Purchase Agreement," "Trustee" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable, documented and out-of-pocket attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, reasonable fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Agent in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 13 - MISCELLANEOUS PROVISIONS

Section 13.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor, Agent or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 13.2. SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Grantor, Agent and their respective successors and permitted assigns forever.

Section 13.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note Purchase Agreement, the Notes or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note Purchase Agreement, the Notes and this Security Instrument shall be construed without such provision.

Section 13.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 13.5. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 13.6. ENTIRE AGREEMENT. This Security Instrument and the other Financing Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Security Instrument and the other Financing Documents.

Section 13.7. LIMITATION ON AGENT'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or

repair of the Property upon Agent, nor shall it operate to make Agent responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent a "mortgagee in possession."

Section 13.8. COLLATERAL AGENT. The Agent has participated in this Security Instrument as directed under and in accordance with the Financing Documents and will perform this Security Instrument solely in its capacity as Collateral Agent and not in its individual capacity. In acting pursuant to this Security Instrument Agreement, the Agent shall be afforded all of the rights, powers, protections, immunities and indemnities set forth in the Financing Documents as if the same were specifically set forth herein. With regards to any action or refusal to act that involves discretion on behalf of the Agent (including, but not limited to the exercise of any remedies and any permissive rights to request the Grantor provide documents or take actions), such action (or inaction) shall be taken (or omitted to be taken) by the Agent pursuant to the terms of the Financing Documents and direction provided thereunder. The Agent shall be entitled to exercise its rights, powers and duties hereunder through agents, attorneys or designees and shall not be liable for any actions of any such party retained by it in good faith. The permissive authorizations, entitlements, powers and rights (including the right to request that the Grantor take an action or deliver a document and the exercise of remedies following an Event of Default) granted to the Agent herein shall not be construed as duties. Notwithstanding anything to the contrary contained herein or in applicable law, the Agent shall have no responsibility for (i) preparing, recording, filing, re-recording, or re-filing any financing statement, perfection statement, continuation statement or other instrument in any public office or for otherwise ensuring the perfection or maintenance of any security interest granted pursuant to, or contemplated by, this Security Instrument (ii) taking any necessary steps to preserve rights against any parties with respect to any Property or (iii) taking any action to protect against any diminution in value of the Property.

Article 14 - DEED OF TRUST PROVISIONS

Section 14.1. CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, represents that it is duly qualified to serve as Trustee hereunder and covenants to perform and fulfill the trusts herein created, being liable, however, only for its own gross negligence or willful misconduct (to the extent determined by a court of competent jurisdiction in a final and nonappealable judgment), and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Agent. Agent may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Agent may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such

successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Agent. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 14.2. TRUSTEE'S FEES. Grantor shall pay all documented and out-of-pocket costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument. Notwithstanding anything to the contrary contained herein or in any other Financing Document, Trustee hereby acknowledges and agrees that no fees or other compensation shall be payable to Trustee hereunder or otherwise in connection with the Notes or Financing Documents except in connection with (a) a sale of the Property in connection with an exercise of remedies hereunder and/or under the other Financing Documents or (b) a release hereof in accordance with the applicable terms and conditions hereof and of the other Financing Documents.

Section 14.3. CERTAIN RIGHTS. With the approval of Agent (acting at the direction of the Required Holders), Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Agent) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Financing Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Trustee acted with gross negligence or willful misconduct in its selection of such agents, and (iv) any and all other lawful action as Agent may instruct Trustee to take to protect or enforce Agent's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property except for any liabilities or damages to the extent determined by a court of competent jurisdiction in a final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of the Trustee. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 14.4. RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by

applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 14.5. PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 14.6. SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Agent or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

Article 15 - GROUND LEASE PROVISIONS

Section 15.1. NO MERGER OF FEE AND LEASEHOLD ESTATES; RELEASES. So long as any portion of the Debt shall remain unpaid, unless Agent shall otherwise consent (acting at the direction of the Required Holders), the fee title to the Land and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, Ground Lessor or in any other Person by purchase, operation of law or otherwise. Agent reserves the right, at any time, to release portions of the Property, including, but not limited to, the Leasehold Estate, with or without consideration, at Agent's election (acting at the direction of the Required Holders), without waiving or affecting any of its rights hereunder or under the Note or the other Financing Documents and any such release shall not affect Agent's rights in connection with the portion of the Property not so released.

Section 15.2. GRANTOR'S ACQUISITION OF FEE ESTATE. In the event that Grantor, so long as any portion of the Debt remains unpaid, shall become the owner and holder of Ground Lessor's fee interest in the portion of the Property demised pursuant to the Ground Lease, the lien of this Security Instrument shall be spread to cover such interest and such interest shall be deemed to be included in the Property. Grantor agrees, at its sole cost and expense, including without limitation, Agent's reasonable, documented and out-of-pocket attorney's fees, to (i) execute any and all documents or instruments necessary to subject the foregoing interest to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on such interest. The foregoing shall not be construed to permit Grantor to acquire the aforesaid fee interest and Grantor rights to acquire additional property shall remain subject to the restrictions relating thereto contained in the Note Purchase Agreement and the other Financing Documents.

Section 15.3. REJECTION OF THE GROUND LEASE.

(a) If the Ground Lease is terminated by Ground Lessor for any reason in the event of the rejection or disaffirmance of the Ground Lease by Ground Lessor pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Grantor, immediately after obtaining notice thereof, shall give notice thereof to Agent, (ii) Grantor, without the prior written consent of Agent (acting at the direction of the Required Holders), shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Grantor made without such consent shall be void and (iii) this Security Instrument and all the liens, terms, covenants and conditions of this Security Instrument shall extend to and cover Grantor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Grantor hereby assigns irrevocably to Agent Grantor's rights to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Ground Lease in the event any case, proceeding or other action is commenced by or against Ground Lessor under the Bankruptcy Code or any comparable federal or state statute or law, provided that Agent shall not exercise such rights and shall permit Grantor to exercise such rights with the prior written consent of Agent (acting at the direction of the Required Holders), not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(b) Grantor hereby assigns to Agent Grantor's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Grantor under the Bankruptcy Code or comparable federal or state statute or law, provided Agent shall not exercise such right, and shall permit Grantor to exercise such right with the prior written consent of Agent (acting at the direction of the Required Holders), not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Grantor shall desire to so reject the Ground Lease, at Agent's request (acting at the direction of the Required Holders), to the extent not prohibited by the terms of the Ground Lease and applicable law, Grantor shall assign its interest in the Ground Lease to Agent in lieu of rejecting the Ground Lease as described above, upon receipt by Grantor of written notice from Agent of such request together with Agent's agreement to cure any existing defaults of Grantor under the Ground Lease and to provide adequate assurance of future performance of Grantor's obligations thereunder.

(c) Grantor hereby assigns to Agent Grantor's right to seek an extension of the 60-day period within which Grantor must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Grantor under the Bankruptcy Code or comparable federal or state statute or law, provided Agent shall not exercise such right, and shall permit Grantor to exercise such right with the prior written consent of Agent (acting at the direction of the Required Holders), not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(d) Grantor hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any Personal Property of Grantor not removed from the Property by Grantor as permitted or required by the Ground Lease, shall at the option of Agent (acting at the direction of the Required Holders), be deemed abandoned by Grantor, provided that

Agent may remove any such Personal Property required to be removed by Grantor pursuant to the Ground Lease and all documented and out-of-pocket costs and expenses associated with such removal shall be paid by Grantor within five (5) days of receipt by Grantor of an invoice for such removal costs and expenses.

Article 16 - STATE-SPECIFIC PROVISIONS

Section 16.1. CONSTRUCTION. The terms and provisions set forth below in this Article 16 shall be construed, to the greatest extent possible, consistently with all other provisions set forth in this Security Instrument, and shall be deemed as being in addition to and supplementing all such other terms and provisions of this Security Instrument. However, notwithstanding anything to the contrary set forth elsewhere in this Security Instrument, in the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2. FORECLOSURE.

(a) Should Agent (acting at the direction of the Required Holders) elect to foreclose by exercise of the power of sale herein contained, Agent shall deliver to Trustee a written declaration of default and demand for sale, and shall deposit with Trustee this Security Instrument and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(b) Upon receipt of notice from Agent, Trustee shall cause to be recorded, published and delivered to Grantor such notice of default and election to sell as is then required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items and in such order as Agent (acting at the direction of the Required Holders) may direct Trustee so to do, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Trustee, Agent or any Agent, may purchase at such sale, and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(c) Subject to applicable law, Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(d) The Property may be sold in one or more parcels and in such manner and order as Agent (acting at the direction of the Required Holders), may direct Trustee so to do. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all

obligations secured hereby have been satisfied, or the entire Property sold, without defect or irregularity.

(e) For the avoidance of doubt, in the event that any provision in this Security Instrument shall be inconsistent with any provision of California law regarding power of sale or foreclosure (the “**California Foreclosure Law**”), the provisions of the California Foreclosure Law shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with California Foreclosure Law. If any provision of this Security Instrument shall grant to Agent (including Agent acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Security Instrument, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Agent or such receiver under the California Foreclosure Law in the absence of said provision, Agent and such receiver shall be vested with the rights granted under the California Foreclosure Law to the full extent permitted by applicable law.

(f) Neither the Agent nor Trustee shall incur liability as a result of the sale of Property, or any part thereof in accordance with the requirements of applicable laws and this Section. The Grantor hereby waives any claims against Agent, Trustee and the Secured Parties arising by reason of the fact that the price at which the Property may have been sold was less than the aggregate amount of the Secured Obligations. The Grantor hereby agrees that in respect of any sale of any of the Property pursuant to the terms hereof, the Agent and Trustee are hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any governmental authority or official, and Grantor further agrees that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall Agent or Trustee be liable or accountable to Grantor for any discount allowed by reason of the fact that such Property is sold in compliance with any such limitation or restriction.

Section 16.3. SUPPLEMENTAL ENVIRONMENTAL PROVISIONS. If any portion of the Property is determined to be “environmentally impaired” (as “environmentally impaired” is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an “affected parcel” (as “affected parcel” is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Agent’s or Trustee’s rights and remedies under this Security Instrument, Agent may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (i) waive its lien on such environmentally impaired or affected portion of the Property, and (ii) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Grantor to judgment and any other rights and remedies permitted by applicable law. For purposes of determining Agent’s right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Grantor knew of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. Agent shall have the right to allocate amounts recovered on the Obligations first to those portions thereof

other than damages and other amounts recoverable under California Code of Civil Procedure Section 736, and thereafter to damages and other amounts recoverable under said Section.

Section 16.4. WAIVER OF REDEMPTION, NOTICE AND MARSHALING OF ASSETS. To the fullest extent permitted by applicable law, Grantor hereby irrevocably and unconditionally waives and releases any right to a marshaling of assets or a sale in inverse order of alienation.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by the undersigned as of the day and year first above written.

CALISTOGA RESILIENCY CENTER, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
COUNTY OF _____)

On _____, 20____, before me, _____
(insert name and title of officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EXHIBIT A
LEGAL DESCRIPTION

[to be inserted]

EXHIBIT J

FORM OF NOTE PURCHASE AGREEMENT

CALISTOGA RESILIENCY CENTER, LLC

\$27,826,365

12.50% Senior Secured Notes due April 4, 2032

NOTE PURCHASE AGREEMENT

Dated April 4, 2025

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CALISTOGA RESILIENCY CENTER, LLC
4360 Park Terrace Drive, Suite 100
Westlake Village, CA 91361

12.50% Senior Secured Notes due April 4, 2032

April 4, 2025

TO EACH OF THE HOLDERS LISTED IN
THE PURCHASER SCHEDULE HERETO:

Ladies and Gentlemen:

Calistoga Resiliency Center, LLC, a Delaware limited liability company (the “**Company**”), agrees with each of the Purchasers as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Company will, concurrently with the Conversion, authorize the amendment and restatement of \$27,826,365 aggregate principal amount of its outstanding Bridge Loan Notes in the form of \$27,826,365 aggregate principal amount of its 12.50% Senior Secured Notes due April 4, 2032 (the “**Notes**”). The Notes shall be substantially in the form set out in Exhibit A. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 23.4 shall govern.

The Notes are to be secured by the Collateral in accordance with the Security Documents. By entering into this Agreement, the Company acknowledges and agrees to be bound by the provisions of the Security Documents. By acceptance hereof, each holder of a Note acknowledges and agrees, and each transferee of a Note shall be deemed to acknowledge and agree, that the Collateral Agent acts as collateral agent for the holders of the Notes and has certain rights and obligations as a collateral agent under the Financing Documents.

SECTION 2. AMENDMENT AND RESTATEMENT OF NOTES.

Subject to the terms and conditions of this Agreement, concurrently with the Conversion the Company will amend and restate each Bridge Facility Note held by a Purchaser and reissue to such Purchaser, at the Closing provided for in Section 3 (*Closing of Conversion*), Notes in the principal amount specified opposite such Purchaser’s name in the Purchaser Schedule in an amount equal to 100% of the principal amount thereof at a purchase price equal to 99.25% of such Note.

SECTION 3. CLOSING OF CONVERSION.

(a) The purchase of the Bridge Loan Notes to be purchased by each Purchaser and the concurrent Conversion shall occur at the offices of Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166, at 9:00 a.m., New York time, at a closing (the “**Closing**”) on April 4, 2025. At the Closing, the Company will deliver to each Purchaser of a Bridge Facility Note an amended and restated Note (or such greater number of Notes in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser’s name (or in the name of its

nominee), against delivery by such Purchaser to the Bridge Facility Provider or its order of immediately available funds in the amount of the purchase price therefor set forth on the Funding Instructions Letter to be paid on the Closing in accordance with this Section 3 (*Closing of Conversion*) by wire transfer of immediately available funds for the account of the Bridge Facility Provider to the wire instructions set forth in the Funding Instructions Letter.

If, at the Closing, the Company shall fail to tender such Notes to any holder as provided above in this Section 3 (*Closing of Conversion*), or any of the conditions specified in Section 4 (*Conditions to Closing of Conversion*) shall not have been fulfilled to such Purchaser's satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure by the Company to tender such Notes or any of the conditions specified in Section 4 (*Conditions to Closing of Conversion*) not having been fulfilled to such Purchaser's satisfaction.

(b) Each holder of Notes shall have the right, but not the obligation, upon written notice (which may be by electronic mail) to the Bridge Facility Provider, to elect to deliver a micro deposit (less than \$51.00) to the account identified in the funding instructions letter to be delivered (the "**Funding Instructions Letter**") no later than three (3) Business Days prior to the Closing.

SECTION 4. CONDITIONS TO CLOSING OF CONVERSION.

Each Purchaser's obligation to purchase and pay for the Bridge Loan Note to be sold to such Purchaser at the Closing and to amend and restate such Bridge Loan Note with a Note is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

Section 4.1 Representations and Warranties. The representations and warranties of the Company, Sponsor and the Pledgor in the Financing Documents to which such Person is a party shall be correct when made and at the Closing.

Section 4.2 Performance; No Default.

(a) The Company shall have performed and complied with all agreements and conditions contained in the Financing Documents required to be performed or complied with by it prior to or at the Closing.

(b) Before and after giving effect to the purchase of the Bridge Loan Notes and the Conversion (and the application of the proceeds of the Bridge Facility as contemplated by Section 6.13 (*Use of Proceeds; Margin Regulations*)), no Default or Event of Default shall have occurred and be continuing.

(c) The Company shall not have entered into any transaction since the date of the Investor Presentation that would have been prohibited by Section 11 (*Negative Covenants*) had such Section applied since such date.

Section 4.3 Compliance Certificates.

(a) *Officer's Certificate.* The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in

Section 4.1 (*Representations and Warranties*), Section 4.2(b) (*Performance; No Default*) and Section 4.9 (*Changes in Corporate Structure*) have been fulfilled.

(b) *Secretary's Certificate.* The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (i) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Financing Documents, (ii) the Company's organizational documents as then in effect, (iii) the incumbency and signatures of those officers authorized to act with respect to the Financing Documents and (iv) a certificate of good standing in its jurisdiction of formation.

Section 4.4 Opinions of Counsel. Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Vinson & Elkins LLP, counsel for the Company and (b) from Winston & Strawn LLP, the Purchasers' special counsel in connection with such transactions.

Section 4.5 Purchase Permitted By Applicable Law, Etc. On the date of the Closing such Purchaser's purchase of a Bridge Loan Note and the concurrent Conversion shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

Section 4.6 Sale of Other Notes. Contemporaneously with the Closing, the Company shall amend and restate the Bridge Loan Notes purchased by each Purchaser from the Bridge Facility Provider and each Purchaser shall purchase the Notes to be purchased by it from the Bridge Facility Provider at the Closing as specified in the Purchaser Schedule attached hereto.

Section 4.7 Payment of Fees and Expenses. Without limiting Section 16.1 (*Transaction Expenses*), the Company shall have paid on or before the Closing:

(a) the fees, charges and disbursements of (i) Winston & Strawn LLP, counsel for the Purchasers, (ii) Vinson & Elkins LLP, counsel for the Company and (iii) the other consultants referred to in the Funds Flow Memorandum, in each case, to the extent reflected in a statement of such counsel or consultant, as applicable, rendered to the Company at least one (1) Business Day prior to the Closing; and

(b) any fees, charges and disbursements required under the fee letters between, and disbursements required under, the fee letters between the Company, on the one hand, and the Depository Bank and the Collateral Agent, on the other hand, referred to in the Investor Presentation.

Section 4.8 Private Placement Number. A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for the Notes.

Section 4.9 Changes in Corporate Structure. The Company shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 6.5.

Section 4.10 Funding Instructions; Funds Flow Memorandum.

(a) Each Purchaser shall have received the Funding Instructions Letter confirming the information specified in Section 3 (*Closing*).

(b) Each Purchaser shall have received the Funds Flow Memorandum.

Section 4.11 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its counsel, and such Purchaser and its counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such counsel may reasonably request.

Section 4.12 Delivery of Financing Documents. The Purchasers shall have received this Agreement and each other Financing Document, duly authorized, executed and entered into by the Company, the Purchasers, in each case, to the extent party thereto.

Section 4.13 Construction Budget and Schedule. The Purchasers shall have received the Construction Budget and Schedule.

Section 4.14 Annual Operating Budget. The Purchasers shall have received the Annual Operating Budget.

Section 4.15 Lien Searches. The Purchasers shall have received the results of a recent lien search in the Office of the Secretary of State of the State of Delaware with respect to the Pledgor and the Company, and in each other jurisdiction where assets of the Pledgor and Company are located, and such searches shall reveal no Liens on the equity interests of the Company or any of the assets of the Pledgor or Company, in each case, except for Permitted Liens or Liens discharged prior to the Closing pursuant to documentation satisfactory to the Purchasers.

Section 4.16 Financing Statements. Each document (including any UCC financing statement) required by the Security Documents or under law or reasonably requested by the Purchasers to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than Permitted Liens that are entitled to a higher priority) shall be in proper form for filing, registration or recordation.

Section 4.17 LLC Interest Certificates. The Collateral Agent shall have received the original executed limited liability company membership interest certificates representing 100% of the limited liability company membership interests in the Company pledged pursuant to the Pledge Agreement, together with an undated transfer power for each such membership interest certificate executed in blank by a duly authorized officer of the Pledgor.

Section 4.18 Filing Fees. The Purchasers shall have received evidence that all filing and recordation fees and all recording and other similar fees, and all recording, stamp and other taxes and

other expenses related to such filings, registrations and recordings necessary for and related to the transactions contemplated by this Agreement and the other Financing Documents to be consummated on or prior to the Closing have been paid in full (to the extent the obligation to make such payment then exists) by or on behalf of the Company or are to be paid in full on the Closing.

Section 4.19 Independent Engineer and Insurance Consultant Reports. The Purchasers shall have received copies of the following reports, together with reliance letters in respect of same authorizing the Purchasers' reliance on such reports: (a) report of the Independent Engineer; and (b) report of the Insurance Consultant.

Section 4.20 Financial Model. The Purchaser shall have received the Financial Model, which includes, *inter alia*, projections of the Debt Service Coverage Ratio during the term of the Notes.

Section 4.21 Historical Financial Statements. The Purchasers shall have received the Historical Financial Statements.

Section 4.22 No Material Adverse Effect. No event, condition or circumstance that would reasonably be expected to constitute a Material Adverse Effect shall have occurred and be continuing.

Section 4.23 Know Your Customer. The Purchasers shall have received all such documentation and information requested by the Purchasers that are necessary (including the names and addresses of the Company) for the Purchasers to identify the Company in accordance with applicable Anti-Money Laundering Laws and the requirements of the USA PATRIOT Act (including the "know your customer" and similar regulations thereunder).

Section 4.24 Collateral Accounts. The Company shall have established each Collateral Account required to be established in accordance with the terms of the Depositary Agreement and the other Financing Documents as of the Closing.

Section 4.25 Base Equity Contributions. The Purchasers shall have received evidence that not less than \$14,300,000 of equity contributions have been used (or are available to the Company to be used) to pay Project Costs.

Section 4.26 Insurance. The Collateral Agent (on behalf of the Purchasers) shall have received (a) an insurance broker's certificate from the Company's nationally recognized insurance broker(s), dated on or about the Closing, confirming that all Required Insurance is in full force and effect and that all premia then due thereon have been paid and providing copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer) and (b) a certificate from the Insurance Consultant, dated on or about the Closing, addressed to the Purchasers and the Collateral Agent confirming that all insurance required to be maintained by the Company pursuant to the terms of this Agreement and the other Transaction Documents to which it is a party (i) are in full force and effect and (ii) all premia due at that time under each relevant insurance have been paid.

Section 4.27 Acquisition of Bridge Facility Loans. The Purchasers shall have acquired the Bridge Facility Loans from the Bridge Facility Provider pursuant to an Assignment and Acceptance (as defined in the Bridge Facility).

Section 4.28 Repayment and Release of Bridge Facility Loans and Liens. Such Purchaser shall have received evidence that: (a) the lenders under the Bridge Facility have been (or

immediately following the issuance of the Notes on the Closing Date, will be) fully paid, and such lenders shall have released all Liens granted in their favor under the Bridge Facility, and (b) each of the "Security Agreement" and the "Pledge Agreement" (as each such term is defined in the Bridge Facility) has been (or immediately following the issuance of the Notes, will be) terminated, in each case pursuant to executed releases, discharges and payoff letters provided on the Closing Date.

SECTION 5. [RESERVED]

SECTION 6. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Purchaser that:

Section 6.1 Organization; Power and Authority.

(a) The Company is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

Section 6.2 Authorization, Consents Etc.

(a) The Company has the power and authority, and the legal right, to make, deliver and perform the Financing Documents to which it is a party and to obtain extensions of credit thereunder. The Company has taken all necessary organizational action to authorize the execution, delivery and performance of the Financing Documents to which it is a party, including, as of the Closing, the granting of Liens pursuant to the Security Documents, and, in the case of the Company, to authorize the extensions of credit on the terms and conditions of the Financing Documents.

(b) No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with such extensions of credit or with the execution, delivery and performance of this Agreement or any of the other Financing Documents by the Company, except (i) consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, (ii) the filings referred to in Section 6.22, (iii) consents, authorizations, filings and notices required by securities, regulatory or other applicable Legal Requirements in connection with an exercise of remedies, (iv) consents, authorizations, filings and notices set forth in Section 10.14 and (v) which, if not obtained or made, would not reasonably be expected to result in a Material Adverse Effect.

(c) Each Financing Document has been duly executed and delivered on behalf of the Company.

(d) This Agreement constitutes, and each other Financing Document upon execution and delivery thereof will constitute, a legal, valid and binding obligation of the Company

enforceable against each such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law.)

Section 6.3 Disclosure.

(a) The Company, through its agent, Jefferies LLC, has delivered to each Purchaser a copy of an Investor Presentation, dated November 2024 (the "**Investor Presentation**"), relating to the transactions contemplated hereby. The Investor Presentation fairly describes, in all material respects, the business and principal properties of the Company. This Agreement, the Investor Presentation prepared by or on behalf of the Company in connection with the transactions contemplated herein, the financial statements listed in Schedule 6.5 and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company prior to March [14], 2025 in connection with the transactions contemplated hereby and identified in Schedule 6.3 (this Agreement, the Investor Presentation and such documents, certificates or other writings and such financial statements delivered to each Purchaser being referred to, collectively, as the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since the date of the latest financial statements delivered pursuant to Section 8.1, there has been no change in the financial condition, operations, business, or properties of the Company except changes that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents. It is understood and agreed that the projections and forward looking statements in the Disclosure Documents are not subject to this Section 6.3(a) and are instead subject to Section 6.3(b), below.

(b) All projections and forward-looking statements in the Disclosure Documents prepared by the Company were prepared in good faith and were based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein.

Section 6.4 No Subsidiaries. The Company has no subsidiaries and has no Equity Interests in any Person.

Section 6.5 Financial Statements; Material Liabilities. The Company has delivered to each Purchaser copies of the financial statements of the Company listed on Schedule 6.5. All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the financial position of the Company as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Section 6.6 Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by the Company of this Agreement, the Notes and the other Financing Documents will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than the creation of any Liens pursuant to the Financing Documents) in respect of any property of the Company under, any indenture, mortgage, deed of trust, loan, purchase or credit

agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which the Company is bound or by which the Company or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Company or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company.

Section 6.7 Litigation; Observance of Agreements, Statutes and Orders.

(a) Except as set forth on Schedule 6.3, there are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Company, threatened in writing against or affecting the Company or any property of the Company in any court or before any arbitrator of any kind or before or by any Governmental Authority that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth in Schedule 6.3,¹ the Company is not (i) in default under any agreement or instrument to which it is a party or by which it is bound, (ii) in violation of any order, judgement, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (iii) any statute or other rule or regulation of any Governmental Authority applicable to the Company, in each case, which default or violation could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.8 Taxes. The Company has filed all Material tax returns that are required to have been filed in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which, individually or in the aggregate, is not Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company has established adequate reserves in accordance with GAAP. The Company knows of no basis for any other tax or assessment that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company in respect of U.S. federal, state or other taxes for all fiscal periods are adequate in all material respects.

Section 6.9 Title to Property; Leases. The Company has good and sufficient title to its properties or leases that individually or in the aggregate are Material or are necessary to construct, operate or maintain the Project, including all such properties reflected in the most recent audited balance sheet referred to in Section 6.5 (*Financial Statements; Material Liabilities*) or purported to have been acquired or leased by the Company after such date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

Section 6.10 Licenses, Permits, Etc.

(a) The Company owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names,

¹ Company to advise what is anticipated to be on Schedule 6.3 (other than the breach of the PG&E PPA).

or rights thereto required for the operations of the Company and the Project, that individually or in the aggregate are Material, without known conflict with the rights of others.

(b) To the best knowledge of the Company, no product or service of the Company infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) To the best knowledge of the Company, there is no Material violation by any Person of any right of the Company with respect to any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Company.

Section 6.11 Compliance with Employee Benefit Plans.

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities in an amount that would result in a Material Adverse Effect. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company is not Material.

(e) The execution and delivery of this Agreement and the Conversion hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 6.11(e) is made

in reliance upon and subject to the accuracy of such Purchaser's representation in Section 7.2 (*Source of Funds*) as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

- (f) The Company does not have any Non-U.S. Plans.

Section 6.12 Private Offering by the Company. Neither the Company nor anyone acting on its behalf has offered the Notes or any similar Securities for sale to, or solicited any offer to buy the Notes or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than fifteen (15) other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue-sky laws of any applicable jurisdiction.

Section 6.13 Use of Proceeds; Margin Regulations. The Company will apply the proceeds of the sale of the Notes hereunder as set forth in Section 10.9 (*Use of Proceeds*). No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the consolidated assets of the Company and the Company does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

Section 6.14 Existing Indebtedness; Future Liens.

(a) Except as described therein, Schedule 6.14 (*Schedule of Existing Indebtedness of the Company*) sets forth a complete and correct list of all outstanding Indebtedness of the Company as of December 31, 2024 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranty thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Company. The Company is not in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company and no event or condition exists with respect to any Indebtedness of the Company that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 6.14 (*Schedule of Existing Indebtedness of the Company*), the Company has not agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness.

(c) The Company is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company, any agreement relating thereto or any other agreement (including its charter or any other organizational document) which limits the amount

of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except as disclosed in Schedule 6.14 (*Schedule of Existing Indebtedness of the Company*).

Section 6.15 Foreign Assets Control Regulations, Etc.

(a) Neither the Company nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Neither the Company nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

Section 6.16 Status under Certain Statutes. The Company is not subject to, or is exempt from, regulation under the Investment Company Act of 1940.

Section 6.17 Environmental Matters.

(a) The Company has no knowledge of any Environmental Claim and has not received any written notice of any Environmental Claim or proceeding against the Company or any of their real properties or other assets owned, leased or operated by the Company, alleging any violation of or liability under any Environmental Laws, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect.

(b) The Company has no knowledge of any facts which would give rise to any Environmental Claim or any other liability under Environmental Laws occurring on or in any way related to real properties owned, leased or operated by the Company or to other assets or their use, except, in each case, such as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) The Company has not stored any Hazardous Materials on real properties owned, leased or operated by the Company in a manner which is contrary to any Environmental Law that would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) The Company has not disposed of any Hazardous Materials in a manner which is contrary to any Environmental Law that would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) All buildings on all real properties now owned, leased or operated by the Company are in compliance with applicable Environmental Laws, except where failure to comply would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 6.18 Energy Regulatory Status.

(a) No later than the date the Project injects electric energy onto the Transmission System, the Company shall: (i) be a “public utility” under the FPA and shall have received authorization from FERC to sell energy, capacity and ancillary services at market-based rates under Section 205 of the FPA (“**MBR Authority**”) and has been granted associated waivers from regulation and blanket authorizations typically granted to sellers of power at market-based rates; and (ii) have filed a notification of self-certification of EWG status with FERC.

(b) The Pledgor is not subject to, or is exempt from, regulation under the FPA as a “public utility”. The Pledgor is a “holding company” under PUHCA solely with respect to its ownership of an EWG. Neither the Company nor the Pledgor is subject to regulation as a “public utility” or an “electrical corporation” or an “electric utility” or any equivalent entity under California laws and regulations governing such entities.

(c) None of the Secured Parties or any Affiliate of such Persons will, solely as a result of the Company’s construction, ownership, leasing or operation of the Project, the sale of energy, capacity or ancillary services therefrom as contemplated in the Material Project Documents or the entering into a Material Project Document in respect of such Project, the issuance of the Notes, the entering into of the Financing Documents by the Company or the Pledgor, or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities, except that (i) upon the exercise of certain remedies as provided for under the Financing Documents, a Secured Party or its Affiliate may be subject to regulation under the FPA or PUHCA, unless an exemption or exception applies and (ii) the exercise of any remedy provided for in any Financing Document by a Secured Party or its Affiliate or any of their respective successors or assigns may require prior FERC approval under Section 203 of the FPA.

(d) Other than the receipt by the Company of MBR Authority (with associated waivers from regulation and blanket authorizations typically granted to sellers of power at market-based rates) from FERC with respect to its future sales of energy and capacity at wholesale, the notice of self-certification of EWG status, and filings, consents, orders or approvals that may be required by the Company to obtain and maintain its Interconnection Agreement, MBR Authority and associated waivers or authorizations, and EWG status, no filing with or consent, order or approval from FERC or CPUC is required to be made or obtained in order for the Company and the Pledgor to enter into the Financing Documents or for the ownership and operation of the Project and the sale of energy, capacity and/or ancillary services therefrom.

Section 6.19 Applicable Permits.

(a) There are no Permits under existing rules of a Governmental Authority (including Environmental Laws) as the Project is contemplated to be constructed, owned and operated that are or will become Applicable Permits other than the Permits described in Schedule 6.19 (Applicable Permits) (other than those Permits the failure of which to obtain or maintain could not reasonably be expected to have a Material Adverse Effect).

(b) Each Applicable Permit listed in Part I of Schedule 6.19 (Applicable Permits) has been issued to or made by the Company, as applicable, is in full force and effect and is not subject to any current legal proceeding (including administrative or judicial appeal, permit renewals or modification) or to any unsatisfied condition (required to be satisfied as of the date this representation and warranty is made) that could reasonably be expected to have a Material Adverse Effect, and all statutorily prescribed appeal periods with respect to the issuance of such Permits have expired.

(c) The Company is in compliance with all Applicable Permits held in its name and to the Company's knowledge, third parties are in compliance with Applicable Permits held for the benefit of the Project except in each case as such non-compliance as could not reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing, each Permit listed in Part II of Schedule 6.19 (Applicable Permits), which has not yet been obtained, is not yet an Applicable Permit and is of a type that is reasonably expected to be timely obtainable in accordance with the Construction Budget and Schedule, and, to the Company's knowledge, no facts or circumstances exist that make it reasonably likely that any such Permit will not be so obtainable.

Section 6.20 Solvency. As of the Closing, the Sponsor, Company and the Pledgor, are each and after giving effect to the transactions contemplated by the Financing Documents, will be, Solvent.

Section 6.21 No Default. No Default or Event of Default has occurred and is continuing.

Section 6.22 Perfection of Security Interests. As of the Closing, the Security Documents are effective to create in favor of the Collateral Agent and the Secured Parties a legal, valid and enforceable security interest in the Collateral described therein, subject to any Permitted Liens. The security interest granted to the Collateral Agent (for the benefit of the Secured Parties) pursuant to the Security Documents in the Collateral will be perfected (a) with respect to any property that can be perfected solely by filing, to the extent Article 9 of the UCC applies thereto, upon the filing of financing statements in the applicable filing office in Delaware, (b) with respect to the Collateral Accounts, upon

execution of the Depositary Agreement and (c) with respect to any property (if any) that can be perfected by possession, upon the Collateral Agent receiving possession thereof.

Section 6.23 Material Project Documents.

(a) Correct and complete copies of all Material Project Documents have been delivered to each Purchaser by the Company.

(b) Each Material Project Document is an Effective Material Project Document (except such Material Project Document that has been terminated in accordance with its terms).

(c) The rights granted to the Company pursuant to the Material Project Documents are sufficient in all material respects to enable the Project to be located, constructed, operated and routinely maintained as contemplated by the Transaction Documents and provide adequate ingress and egress for any reasonable purpose in connection with the operation and maintenance of the Project.

Section 6.24 Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there is no strike, request for representation, organizing campaign, work stoppage, slowdown, lockout or other labor dispute against the Company pending or, to the knowledge of the Company, threatened; and (b) hours worked by and payments made to employees of the Company have not been in violation of the Fair Labor Standards Act or any other applicable Legal Requirement dealing with such matters.

Section 6.25 Required Insurance. All Required Insurance has been obtained and is in full force and effect.

Section 6.26 Condemnation Proceedings. There are no condemnation proceedings by or before any Governmental Authority now pending or, to the knowledge of the Company, threatened in writing with respect to any Project, or sale of power therefrom or any portion thereof material to the construction, ownership or operation of the Project or sale of power therefrom.

Section 6.27 Utilities. All utility services necessary for the construction of the Project and the operation of the Project for its intended purpose are available at the Mortgaged Property or will be so available as and when required upon commercially reasonable terms.

Section 6.28 Roads and Feeder Lines.

(a) All roads necessary for the construction and full utilization of each Project for its intended purposes under the Material Project Documents have either been completed or the necessary rights of way therefor have been acquired, except for Permits to cross state, county or township roads that will be granted as a ministerial matter during the construction of such Project, prior to the date such Permits are required to be acquired pursuant to any applicable Governmental Rule.

(b) All necessary easements, rights of way, agreements and other rights for the construction, interconnection, and utilization of the feeder lines of each Project have been acquired.

SECTION 7. REPRESENTATIONS OF THE PURCHASERS.

Section 7.1 Purchase for Investment.

(a) Each Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

(b) The Purchaser (i) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Notes and of making an informed investment decision and (ii) (A) has performed such investigations it deems necessary in order to make an informed investment decision and (B) can bear the economic risk of (x) investment in the Notes and (y) a total loss in respect of such investment. The Purchaser has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of and form an investment decision with respect to its investment in the Notes and to protect its own interest in connection with such investment.

Section 7.2 Source of Funds. Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "**Source**") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("**PTE**") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the "**NAIC Annual Statement**")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 7.2, the terms “employee benefit plan,” “governmental plan,” and “separate account” shall have the respective meanings assigned to such terms in section 3 of ERISA.

SECTION 8. INFORMATION AS TO COMPANY

Section 8.1 Financial and Business Information. The Company shall deliver to each holder of a Note that is an Institutional Investor:

(a) *Quarterly Statements* — (x) until the first anniversary of the Closing, within ninety (90) days and (y) thereafter, within sixty (60) days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) the balance sheet of the Company as at the end of such quarter, and

(ii) statements of income, changes in shareholders' equity and cash flows of the Company, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments;

(b) *Annual Statements* — within 120 days after the end of each fiscal year of the Company, duplicate copies of,

(i) the balance sheet of the Company as at the end of such year, and

(ii) statements of income, changes in members' equity and cash flows of the Company for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon (without a "going concern" or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

(c) *Construction Reports* — on or prior to the 30th day following the last day of each calendar month, provide to each Purchaser and the Independent Engineer monthly construction progress reports delivered to the Company under the EPC Contract;

(d) *Annual Operating Budget* — no later than 45 days prior to the end of each fiscal year of the Company commencing with the fiscal year ending December 31, 2025, the Company shall adopt and deliver to each Holder an operating plan and budget for the following fiscal year with respect to the operation and maintenance of the Project, including all anticipated Operating Costs, with allowance for contingencies (the "**Annual Operating Budget**");

(e) *Notice of Default or Event of Default* — promptly, and in any event within 5 days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any written notice or taken any action with respect to a claimed Default of the type referred to in Section 12(g), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(f) *Employee Benefits Matters* — to the extent that it would reasonably be expected to result in a Material Adverse Effect, promptly, and in any event within 5 days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature

thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof;

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect; or

(iv) receipt of notice of the imposition of a Material financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more non-U.S. Plans;

(g) *Notices from Governmental Authority* — promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Company from any Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(h) *Resignation or Replacement of Auditors* — within 10 days following the date on which the Company's auditors resign or the Company elects to change auditors, as the case may be, notification thereof, together with such further information as the Required Holders may request;

(i) *Litigation* — promptly, copies of any written complaint commencing any litigation or proceeding (or any written threat or notice of the intention of any Person to file or commence any litigation or proceeding), including any litigation or proceeding under Environmental Laws, involving the Company or the Project, to the extent any such litigation or proceeding (i) relates to the Project and involves a claim which equals or exceeds \$2,000,000, (ii) would reasonably be expected to have a Material Adverse Effect if determined adversely to the Company or the Project or (iii) seeks injunctive or similar relief;

(j) *Event of Loss* — the occurrence of any Event of Loss, in each case, whether or not insured and involving a probable loss of \$2,000,000 or more;

(k) *Environmental Matters* — promptly, and in any event within 30 days of the Company's knowledge thereof, provide (i) copies of any written notices of noncompliance with any Environmental Law or Release of Hazardous Materials on or from any Mortgaged Property, required to be reported pursuant to Environmental Laws or (ii) pending or, to the Company's knowledge,

threatened in writing, material Environmental Claim against the Company arising in connection with its operations on or at the Project or any Mortgaged Property, in each case, which would reasonably be expected to have a Material Adverse Effect;

(l) *Material Adverse Effect* — the occurrence of any event or condition that has had or is reasonably expected to cause a Material Adverse Effect;

(m) *Material Project Document* — (i) the delivery or receipt of any notice pursuant to any Material Project Document that could reasonably be expected to have a Material Adverse Effect, (ii) any termination or material amendment, modification or waiver of any Material Project Document or (iii) any material breach or default under any Material Project Document (such notice to be provided no later than five Business Days after the receipt by the Company of any notice of such material breach or default of a Material Project Document from a Material Project Participant); or any event of force majeure asserted under any Material Project Document which exists for more than 10 consecutive days;

(n) *Tax Credit Transfer Documents* — promptly after the Tax Credit Transfer Agreement Signing Date, copies of the Tax Credit Transfer Documents; and

(o) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such holder of a Note.

Section 8.2 Visitation. The Company shall permit the representatives of each holder of a Note that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company, all at such reasonable times and no more than once a year (for all Purchasers and holders of Notes, taken as a whole), as reasonably requested in writing; and

(b) *Default* — if a Default or an Event of Default then exists, at the expense of the Company to visit and inspect any of the offices or properties of the Company, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their affairs, finances and accounts with their officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company), all at such times and as often as may be reasonably requested.

Section 8.3 Electronic Delivery. Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Section 8.1(a) (*Quarterly Statements*) or (b) (*Annual Statements*) shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(a) such financial statements satisfying the requirements of Section 8.1(a) (*Quarterly Statements*) or Section 8.1(b) (*Annual Statements*) are delivered to each holder of a Note by e-mail at the e-mail address set forth in such holder's Purchaser Schedule or as communicated from time to time in a separate writing delivered to the Company; or

(b) such financial statements satisfying the requirements of Section 8.1(a) (*Quarterly Statements*) or Section 8.1(b) (*Annual Statements*) are timely posted by or on behalf of the Company on Intralinks or on any other similar website to which each holder of Notes has free access;

provided however, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 21 of this Agreement.)

SECTION 9. PAYMENT AND PREPAYMENT OF THE NOTES.

Section 9.1 Scheduled Amortization; Maturity. The Company will prepay and on the Maturity Date, the Company will repay, the Notes at par and without payment of the Make-Whole Amount or any premium on the dates and in the amounts set forth in Annex II, *provided* that upon any partial prepayment of the Notes pursuant to Section 9.2 or partial purchase of the Notes pursuant to Section 9.5, the principal amount of each required prepayment of the Notes becoming due under this Section 9.1 on and after the date of such prepayment shall be reduced in the same proportion as the aggregate unpaid principal amount of the Notes is reduced as a result of such prepayment or purchase.

As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

Section 9.2 Optional Prepayments with Make-Whole Amount. The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount no less than 5% of the aggregate principal amount of the Notes then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this Section 9.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 18. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 9.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two (2) Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

Section 9.3 Offer to Prepay.

(a) In addition to required pre-payments pursuant to Section 9.1 (*Scheduled Amortization; Maturity*), the Company shall make an Offer to Prepay the Notes at par, without prepayment or penalty, upon the occurrence of the events and in the principal amounts (plus accrued

and unpaid interest on such principal amount to and including the date of prepayment) as describe below (each, an “**Offer to Prepay**”):

(i) to the extent all or any portion of the Net Available Amount in connection with any Event of Taking or Event of Loss is required to be transferred to the Prepayment Account in accordance with Section 3.05(b) (*Loss Proceeds*) of the Depositary Agreement, in an amount equal to such portion of the Net Available Amount;

(ii) to the extent of any Net Cash Proceeds in excess of \$1,000,000 received from sales of assets (other than asset disposals in the ordinary course of business or otherwise permitted hereunder) that are not used to purchase replacement assets within one hundred eighty (180) days following receipt thereof, in an amount equal to such excess;

(iii) to the extent of amounts on deposit in the Distribution Reserve Account and undisbursed for eighteen (18) consecutive months, in an amount equal to such amounts on deposit;

(iv) promptly after the earlier to occur of the Tax Credit Transfer Agreement Funding Date and the Tax Credit Transfer Outside Date, in an amount equal to the first \$12,963,006 of Tax Credit Transfer Proceeds received (the “**Tax Credit Transfer Prepayment Amount**”); and

(v) upon the occurrence of a Change of Control, in an amount equal to the amount required to prepay all of the Notes at par.

(b) On the date (the “**Offer Date**”) which shall be no later than ten (10) Business Days following (i) in the case of Section 9.3(a)(i), the date on which the applicable Net Available Amounts are available to be applied for prepayment in accordance with Section 3.05 of the Depositary Agreement, (ii) in the case of Section 9.3(a)(ii), the date on which the Company decides not to use such Net Cash Proceeds for the purchase of replacement assets, (iii) in the case of Section 9.3(a)(iii), the date on which amounts on deposit in the Distribution Reserve Account are transferred to the Prepayment Account in accordance with Section 3.06(b)(ii) of the Depositary Agreement and are available to be applied for prepayment in accordance with Section 3.06 of the Depositary Agreement, (iv) in the case of Section 9.3(a)(iv), the date that is the earlier to occur of the Tax Credit Transfer Agreement Funding Date and the Tax Credit Transfer Outside Date and (v) in the case of Section 9.3(a)(v), the date of the Change of Control of the applicable Company, the Company shall make an Offer to Prepay, which shall remain open for a period of at least twenty (20) Business Days following its commencement, by sending a notice to each holder of a Note (with a copy to the Collateral Agent), by overnight mail and otherwise in accordance with Section 19, which notice shall state:

(i) that the Offer to Prepay is being made pursuant to this Section 9.3 and that all Notes tendered will be accepted for payment;

(ii) the aggregate amount (the “**Aggregate Offer Amount**”) being offered by the Company to prepay the Notes, specifying the amount of such principal and accrued interest thereon;

(iii) the date (the “**Prepayment Date**”), which date shall be no earlier than ten (10) Business Days and no later than sixty (60) Business Days from the Offer Date, the

Company shall prepay the Notes to be prepaid, *provided* that each holder shall, if applicable, tender reasonably promptly after such prepayment, in accordance with the instructions in the applicable Offer to Prepay, each of its respective Notes that is prepaid in full and in which no other payment obligations with respect thereto remains outstanding;

(iv) that each holder has the right to accept or decline such Offer to Prepay as to its *pro rata* share thereof (such *pro rata* share to be determined by multiplying the Aggregate Offer Amount by a fraction, the numerator of which is the aggregate principal amount of the Notes owing to such holder on the Offer Date and the denominator of which is the aggregate principal amount of all outstanding Notes as of the Offer Date);

(v) that any holder electing to accept such Offer to Prepay with respect to their Notes may elect to have all or any portion of their *pro rata* share of the proposed prepayment (as specified by such holder) prepaid;

(vi) that any holder electing (A) to have less than its *pro rata* share (as determined in accordance with clause (v) above) of the proposed prepayment shall provide a notice of acceptance to the Company, which shall include the amount and Notes to be prepaid or (B) not to have its Notes (or any portion thereof) prepaid shall provide a notice of rejection to the Company, in each case within twenty (20) Business Days after receipt by such Holder of the Offer to Prepay, and that failure of any Holder to so provide such notice of acceptance as to less than its *pro rata* share of the proposed prepayment or notice of rejection within such twenty (20) Business Days shall be deemed to be a rejection by such Holder of its *pro rata* share (as determined in accordance with clause (v) above) of such Offer to Prepay;

(vii) that any Notes not prepaid on the applicable Prepayment Date shall continue to accrue interest;

(viii) that, unless the Company defaults in making such payment, the Notes tendered for payment pursuant to the Offer to Prepay shall cease to accrue interest after the Prepayment Date;

(ix) that holders of Notes will be entitled to withdraw their election if the Company receives, not later than the close of business on the second Business Day preceding the Prepayment Date, electronically or by mail a notice setting forth the name of the holder, the principal amount of Notes delivered for purchase, and a statement that such holder is withdrawing his election to have the Notes purchased; and

(x) that holders whose Notes are being purchased shall be required to surrender the Notes and holders whose Notes are being purchased in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$100,000 in principal amount or an integral multiple of \$1,000 in excess thereof.

(c) On the Prepayment Date, the Company shall:

(i) accept for payment all Notes properly tendered pursuant to the related Offer to Prepay;

(ii) pay each holder an amount equal to the payment required in respect of such holder's Note or portion of such Note properly tendered;

(iii) deliver to the Collateral Agent the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes being purchased by the Company; and

(iv) promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided*, that each such new Note will be in a principal amount of \$100,000 or an integral multiple of \$1,000 in excess thereof.

(d) If the Company complies with the provisions of the preceding clause (b), on and after the Prepayment Date, interest shall cease to accrue on the Notes or the portions thereof repurchased or repaid. If any holder accepts an Offer to Prepay (and notifies the Company of such acceptance) pursuant to Section 9.3(b) and such acceptance is not rescinded but the Company does not repurchase or repay such Note because of the failure of the Company to comply with the preceding clause, interest shall be paid on the unpaid principal, from the Prepayment Date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the Default Rate.

(e) The Company shall promptly notify the Collateral Agent of any prepayment of the full outstanding principal amount of the Notes pursuant to Section 9.3.

Section 9.4 Mandatory Prepayments. In addition to required pre-payments pursuant to Section 9.1 (*Scheduled Amortization; Maturity*), the Company shall make the following mandatory payments of the Notes:

(a) no later than the third Business Day following the date of receipt by the Company of any cash proceeds from the incurrence of any Indebtedness of the Company (other than with respect to any Indebtedness permitted pursuant to Section 11.9) the Company shall prepay (on a pro rata basis based on the respective principal amounts outstanding of the Notes) the Notes, together with accrued and unpaid interest on the principal amount to be prepaid and an amount equal to the Make-Whole Amount for each such Note, in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses; and

(b) no later than the third Business Day following the date of receipt by the Company of any Net Equity Proceeds, the Company shall prepay (on a pro rata basis based on the respective principal amounts outstanding of the Notes) the Notes, together with accrued and unpaid interest on the principal amount to be prepaid and an amount equal to the Make-Whole Amount for each such Note, in an aggregate amount equal to 100% of such Net Equity Proceeds.

Section 9.5 Allocation of Partial Prepayments. In the case of each partial prepayment of the Notes pursuant to Section 9.1 (*Scheduled Amortization; Maturity*), Section 9.2 (*Optional Prepayments with Make-Whole Amount*) or Section 9.4 (*Mandatory Prepayments*), the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment. In the case of each partial prepayment of the Notes pursuant to Section 9.3

(*Offer to Prepay*), the principal amount of the Notes to be prepaid shall be allocated among all of the Notes being prepaid at such time in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 9.6 Maturity; Surrender, Etc. In the case of each prepayment of Notes pursuant to this Section 9, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

Section 9.7 Purchase of Notes. The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with this Agreement and the Notes. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment or prepayment of Notes pursuant to this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

Section 9.8 Make-Whole Amount.

The term “**Make-Whole Amount**” means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings: “**Called Principal**” means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 9.2 or has become or is declared to be immediately due and payable pursuant to Section 13.1, as the context requires.

“**Discounted Value**” means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury Securities Reported having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury Securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury Securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining

Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

“**Remaining Average Life**” means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to [Section 9.2](#) or [Section 13.1](#).

“**Settlement Date**” means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to [Section 9.2](#) or has become or is declared to be immediately due and payable pursuant to [Section 13.1](#), as the context requires.

Section 9.9 Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, (x) except as set forth in [clause \(y\)](#), any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal of or Make-Whole Amount on any Note (including principal due on the Maturity Date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

SECTION 10. AFFIRMATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 10.1 Compliance with Laws. Without limiting Section 11.4 (*Economic Sanctions, Etc.*), the Company shall comply with all laws, ordinances or Governmental Rules or regulations to which it is subject (including ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 6.15 (*Foreign Assets Control Regulations, Etc.*)) and will obtain and maintain in effect all Permits necessary to the ownership of its properties or to the conduct of its business, in each case to the extent necessary to ensure that failures to obtain or maintain in effect such Permits and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 10.2 Insurance; Loss Proceeds. The Company shall:

(a) (i) keep and maintain the Project, all equipment and other property useful and necessary in the business of the Company in good working order and condition, ordinary wear and tear excepted and (ii) maintain and operate the Project in accordance with its obligations under the Material Project Documents, insurance policies, all Applicable Permits and all applicable Legal Requirements, except, in each case (including clauses (i) and (ii) of this Section 10.2(a)), where the failure to do so would not reasonably be expected to have a Material Adverse Effect; and

(b) maintain, through either an individual policy or as part of a group policy maintained by or for the Company, with financially sound and reputable insurance companies, the insurance on all material property of the Company that is of an insurable character in at least the amounts and against at least such risks (but including in any event property/business interruption and casualty) as are set forth on Schedule 10.2 hereto, to the extent available on commercially reasonable terms (the “**Required Insurance**”). If the Company fails to take out or maintain the full insurance coverage required by this Section 10.2, the Collateral Agent, acting at the direction of the Required Holders, upon ten (10) Business Days’ prior notice (unless the aforementioned insurance would lapse within such period or has already lapsed, in which event notice shall not be required) to the Company of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premia on the same.

Section 10.3 Maintenance of Properties. The Company shall maintain and keep, or cause to be maintained and kept, its properties in all material respects, in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section 10.3 shall not prevent the Company from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business or the Company has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 10.4 Tax Status; Payment of Taxes.

(a) The Company shall file all Material tax returns required to be filed by it in any jurisdiction and shall pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on it or any of its properties, assets, income or franchises, to the extent the same have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might

become a Lien on properties or assets of the Company, *provided* that the Company shall not be required to pay any such tax, assessment, charge or levy if (i) the amount, applicability or validity thereof is contested by the Company on a timely basis in good faith and in appropriate proceedings, and the Company has established adequate reserves therefor in accordance with GAAP on the books of the Company or (ii) the nonpayment of all such taxes, assessments, charges and levies could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Company shall at all times maintain its status as a partnership or an entity disregarded for U.S. federal, state and local income tax purposes. All of the owners of interests in the Company that are treated as equity for U.S. federal income tax purposes will be United States persons within the meaning of Code Section 7701(a)(30).

Section 10.5 Corporate Existence, Etc. Subject to Section 11.2 (*Merger, Consolidation, Etc.*), the Company shall at all times preserve and keep its corporate existence in full force and effect.

Section 10.6 Books and Records. The Company shall maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company. The Company shall keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets.

Section 10.7 Further Assurances; Additional Collateral.

(a) Subject to the terms and conditions of this Agreement and the other Financing Documents, the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions necessary to maintain and preserve the Liens created by the Security Documents and the priority thereof, subject in all events to Permitted Liens, including (i) making filings and recordings on a timely basis, (ii) making payments of fees and other charges on a timely basis, (iii) issuing and, if necessary, filing or recording supplemental documentation on a timely basis, including continuation statements, (iv) taking commercially reasonable efforts to promptly discharge all claims or other Liens (other than Permitted Liens) adversely affecting the rights of any Secured Party in any Collateral, (v) publishing or otherwise delivering notice to third parties and (vi) taking all other actions necessary to ensure that all Collateral is subject to a valid and enforceable first-priority Lien (subject only to Permitted Liens) in favor of the Collateral Agent for the benefit of the Secured Parties.

(b) Upon the occurrence of any change in the legal description to any Site Lease, the Company shall (i) promptly execute an amendment to the Mortgage with respect to such Site Lease updating such legal description and (ii) deliver copies of the documents described in clause (i) above to the Secured Parties.

(c) With respect to any personal property acquired after the Closing by the Company as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected security interest, the Company shall promptly (i) execute and deliver to the Collateral Agent such amendments to the Security Agreement or such other documents necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest in such property, including the entering into of account control agreements and the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Security Agreement or by applicable law or as may be reasonably requested by the Collateral Agent (acting at the direction of the Required Holders); *provided* that the actions

contemplated by clause (ii) shall not be required in respect of any such property if perfection of the security interest in such property requires more than the entering into of account control agreements and the filing of Uniform Commercial Code financing statements or delivery of Collateral that can be perfected by possession unless the value of such property, individually or in the aggregate, is equal to \$1,000,000 or more.

(d) With respect to any fee or leasehold interest in any real property having a value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing by the Company, the Company shall promptly (i) execute and deliver a mortgage or deed of trust, as applicable, (or an amendment to the existing Mortgage) in favor of the Collateral Agent, for the benefit of the Secured Parties, covering such real property and (ii) if requested by the Collateral Agent (acting at the direction of the Required Holders), deliver to the Secured Parties title insurance, surveys, consents, estoppels and legal opinions with respect to such after-acquired property in form and scope substantially reasonably satisfactory to the Required Holders with respect to the Mortgage or the Mortgaged Properties.

Section 10.8 Material Project Documents. The Company shall (a) perform and observe, in all material respects, the terms, its covenants and obligations under the Material Project Documents, except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (b) enforce, defend and protect all of its material rights under all of the Material Project Documents, except to the extent that the failure to enforce, defend or protect any such rights could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect and (c) operate, preserve and maintain the Project in accordance with applicable law, specifications in the relevant Material Project Documents and, in the absence thereof, Prudent Industry Practices, in each case, in all material respects.

Section 10.9 Use of Proceeds. The Company shall apply the proceeds of the sale of the Notes to (a) pay Project Costs, (b) fund the Debt Service Reserve Account, the Operating and Major Maintenance Reserve Account and the CapEx and Warranty Reserve Account to the then-applicable Debt Service Reserve Requirement, Operating Reserve Requirement and CapEx Reserve Requirement, as applicable, (c) pay fees, costs and expenses in connection with the transactions under the Transaction Documents and/or (d) make a distribution or distributions to the Sponsor or its designee as and when permitted in accordance with Section 3.01(b)(iii) of the Depositary Agreement.

Section 10.10 Separateness Provisions. The Company shall comply with its separate obligations under its organizational documents.

Section 10.11 Operating Budget.

(a) The Company shall use its commercially reasonable efforts to comply with the applicable Annual Operating Budget.

(b) Each Annual Operating Budget may only be amended with the prior written consent of the Collateral Agent (acting upon the instructions of the Required Holders in consultation with the Independent Engineer), which consent shall not be unreasonably withheld, conditioned, or delayed; *provided* that the Annual Operating Budget may increase, without the consent, the aggregate amount of Operating Costs and Capital Expenditures by no more than 10% as contemplated by the prior effective Annual Operating Budget or as projected for any given year in the Financial Model delivered as a condition precedent to the Closing pursuant to Section 4.23 above.

Section 10.12 Construction of Project. The Company shall construct, or cause the construction of, the Project in accordance, in all material respects, with the Construction Budget and Schedule, the applicable Material Project Documents (including the EPC Contract), Legal Requirements, Prudent Industry Practices and Applicable Permits, in each case, taking into account any modifications, supplements, waivers or change orders entered into as permitted by Section 11.6; *provided* that the Company shall not be considered in violation of the foregoing solely due to exceeding the amounts contemplated in the Construction Budget and Schedule by no greater than 10% in the aggregate or as a result of payable of Project Costs that are unanticipated, imminent, due and payable under any project document.

Section 10.13 Market-Based Rate Authority; EWG Status. The Company shall take all necessary or appropriate actions to (a) obtain and maintain MBR Authority (with all waivers of regulations and blanket authorizations as are customarily granted by FERC to entities authorized to sell wholesale electric power at market-based rates) and (b) obtain and maintain EWG status.

Section 10.14 Conditions Subsequent.

(a) Notwithstanding anything to the contrary contained in this Agreement, the release and disbursement of funds deposited in the Note Proceeds Account in accordance with Section 3.01(b) of the Depositary Agreement are subject to the fulfillment to each holder's satisfaction of the following conditions (each, a "**Condition Subsequent**" and collectively, the "**Conditions Subsequent**"), as applicable, by the date that is one hundred and eighty (180) days after the Closing (such date, the "**Outside Condition Subsequent Date**"), as such date may be extended by the Purchasers in their sole discretion:

(i) the Company shall use commercially reasonable efforts to obtain and deliver to each holder copies of each fully executed Consent or notice, as applicable, set forth in Schedule 10.14 hereto;

(ii) the Company shall deliver to the holders a duly executed PPA Amendment in form and substance satisfactory to the holders, which shall be in full force and effect;

(iii) the Company shall deliver to the holders a copy of the CPUC Approval (as defined in the Power Purchase Agreement) with respect to the Power Purchase Agreement, including the PPA Amendment;

(iv) any Delay Damages (as defined in the Power Purchase Agreement) due and owing by the Company to the Power Purchaser under the Power Purchase Agreement shall have been satisfied or waived;

(v) the Initial Delivery Date shall have occurred, and the Company shall have delivered to the holders a copy of the Initial Delivery Date Confirmation Letter (as defined in the Power Purchase Agreement);

(vi) the Company shall deliver to the holders a duly executed Tax Credit Transfer Agreement in form and substance satisfactory to the holders in their reasonable sole discretion, which shall be in full force and effect;

(vii) the Company shall deliver to the holders in respect of the Mortgaged Property:

(A) the fully executed and notarized Mortgage in proper form for recording in the official real property records of Napa County, California (the “**Official Records**”), encumbering the Mortgaged Property, which shall be in form and substance satisfactory to Collateral Agent and each Purchaser;

(B) an estoppel and consent agreement from the City in satisfaction of the requirements set forth in Section 22c of the Site Lease and dated as of a date that is no more than twenty-five (25) days prior to the date of the Mortgage, which shall be in form and substance satisfactory to Collateral Agent and each Purchaser;

(C) an ALTA 2006 Form extended coverage loan policy of title insurance (the “**Title Policy**”) issued by a nationally recognized title company reasonably acceptable to Collateral Agent and the Purchasers (the “**Title Company**”) with respect to the Mortgaged Property identified therein, in an amount not less than \$[_____], and otherwise in form and substance reasonably satisfactory to each holder and the Collateral Agent, containing such endorsements as each holder and the Collateral Agent may reasonably request, including, but not limited to, endorsements as to access, comprehensive coverage, contiguity, and subdivision, and (x) insuring that Issuer has good legal and valid title, including leasehold interest and easement interest, in, or right to occupy and use, such Mortgaged Property (and any other real property that is subject to any easement granted for the benefit of the Company), free and clear of any Liens or other exceptions to title other than Permitted Encumbrances, (y) containing no exception for the lien rights of mechanics’ liens or suppliers, inchoate or otherwise, and (z) insuring such other matters as the holders and Collateral Agent may request; and (ii) evidence satisfactory to the holders that the Company has paid to the Title Company or to the appropriate Governmental Authority all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the Title Policy and all recording charges payable in connection with recording the Mortgage in the Official Records; and

(D) the Collateral Agent and the holders shall have received ALTA/ACSM form survey of the Mortgaged Property prepared in accordance with the 2021 Minimum Standard Detail Requirements in form and substance reasonably satisfactory to the Required Holders showing (i) as to the Mortgaged Property, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and showing the perimeter within which all improvements are located and all encroachments thereon,(ii) the location and dimensions of all improvements, fences or encroachments located in or on the Mortgaged Property, (iii) whether the Mortgaged Property or any portion thereof is located in a special earthquake or flood hazard zone and (iv) that there are no encroachments, easements or other encumbrances affecting the Mortgaged Property, except for Permitted Liens;the Collateral Agent shall have received (i) a flood hazard certificate evidencing whether the Mortgaged Property is located, in whole or in part, in an area designated by the Federal Emergency Management Agency as a special flood hazard area (a “**Flood Hazard Property**”) and whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance

Program, (ii) for any Flood Hazard Property, the Company's written acknowledgment of receipt of written notification as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which such Flood Hazard Property is located is participating in the National Flood Insurance Program and (iii) for any "Buildings" or "Manufactured (Mobile) Homes" (as such terms are defined in Flood Insurance Laws) situated on a Flood Hazard Property which Buildings and/or Manufactured (Mobile) Homes are also located in a special flood hazard area or an area having mud slide hazards, copies of the application for a flood insurance policy of the Company plus proof of premium payment, and a declaration page confirming that flood insurance in the amounts required by Flood Insurance Laws has been issued, or such other evidence of such flood insurance reasonably satisfactory to the Required Holders and naming the Collateral Agent as sole loss payee on behalf of the Holders of Notes;

(viii) the Company shall deliver to the holders an opinion of Venable LLP, California counsel to the Company, covering matters related to the Mortgage and real estate matters incident to the transaction;

(ix) the Independent Engineer shall deliver to the holders a certificate confirming that the Project has been placed in service for U.S. federal income tax purposes; and

(x) the Company shall deliver to the holders a duly executed contract with an expiry date not earlier than December 31, 2031 for a supply of Fuel (as defined in the Power Purchase Agreement) required for the Company to comply with its obligations under Section 10.1(c)(ix) of the Power Purchase Agreement with Air Products and Chemicals, Inc., Air Liquide, S.A., Linde plc or another gas provider mutually acceptable to the Company and the holders of the Notes.

(b) Notwithstanding the foregoing, the Company may, without satisfying each of the Conditions Subsequent, release an amount from the Note Proceeds Account (i) (without duplication of any amounts released pursuant to clause (ii) of this Section 10.14) not to exceed \$12,963,006 upon (I) the Company delivering to the holders a duly executed PPA Amendment in form and substance satisfactory to the holders and (II) the satisfaction of clauses (a)(vi) and (a)(ix) of this Section 10.14 and (ii) (without duplication of any amounts released pursuant to clause (i) of this Section 10.14) not to exceed \$14,863,359 upon the satisfaction of each of the Conditions Subsequent (other than clauses (a)(vi) and (a)(ix) of this Section 10.14).

(c) If (i) an Event of Default has occurred and is continuing and the Collateral Agent has been so instructed in writing by the Required Holders or (ii) the Conditions Subsequent have not been satisfied by the Outside Condition Subsequent Date, the Depositary Bank shall, in accordance with Section 3.01(b)(iii) of the Depositary Agreement and upon receipt of the Note Proceeds Release Instructions (as defined in the Depositary Agreement) executed by the Collateral Agent, pay all remaining amounts in the Note Proceeds Account to the holders of the Notes in accordance with such Note Proceeds Release Instructions (each of clauses (i) and (ii), a "**Return of Funds**") as follows:

(i) In the event that such Return of Funds occurs prior to the satisfaction of the Condition Subsequent set forth in clause (a)(v) of this Section 10.14, the Return of Funds to each holder of a Note shall be at a price equal to 0.15% multiplied by the outstanding principal amount of such holder's Notes; *provided*, that any interest that accrued and was paid

on such outstanding principal amount during the period such funds were on deposit in the Note Proceeds Account shall be netted from the amount paid by the Company to such holder pursuant to this clause (c)(i).

(ii) In the event that such Return of Funds occurs after satisfaction of the Condition Subsequent set forth in clause (a)(v) of this Section 10.14, the Return of Funds to each holder of a Note shall be at a price equal to 0.40% multiplied by the outstanding principal amount of such holder's Notes; *provided*, that any interest that accrued and was paid on such outstanding principal amount during the period such funds were on deposit in the Note Proceeds Account shall be netted from the amount paid by the Company to such holder pursuant to this clause (c)(ii).

SECTION 11. NEGATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 11.1 Transactions with Affiliates. Except as set forth in Schedule 6.3, the Company will not enter into directly or indirectly any transaction or group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of the Company's business and upon fair and reasonable terms no less favorable to the Company than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

Section 11.2 Merger, Consolidation, Etc. The Company shall not consolidate with or merge with any other Person or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any Person unless:

(a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease all or substantially all of the assets of the Company as an entirety, as the case may be, shall be a solvent corporation or limited liability company organized and existing under the laws of the United States or any state thereof (including the District of Columbia), and, if the Company is not such corporation or limited liability company, (i) such corporation or limited liability company shall have executed and delivered to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement, the Notes and the other Financing Documents and (ii) such corporation or limited liability company shall have caused to be delivered to each holder of any Notes an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof; and

(b) immediately before and immediately after giving effect to such transaction or each transaction in any such series of transactions, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of the Company shall have the effect of releasing the Company or any successor corporation or limited liability company that shall theretofore have become such in the manner prescribed in this Section 11.2, from its liability under this Agreement, the Notes and the other Financing Documents.

Section 11.3 Line of Business; Subsidiaries, Employees. (a) The Company shall not engage in any business if, as a result, the general nature of the business in which the Company would then be engaged would be substantially changed from the general nature of the business in which the Company is engaged on the date of this Agreement as described in the Investor Presentation.

(b) The Company shall not (i) create, form or acquire any subsidiary (of any percentage of legal, beneficial or record ownership), (ii) enter into any partnership or joint venture or (iii) maintain any employees. For purposes of this Section 11.3, beneficial ownership shall not refer to any Permitted Investments or contractual rights of the Company otherwise permitted pursuant to the Financing Documents.

Section 11.4 Economic Sanctions, Etc. The Company shall not, and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder or any affiliate of such holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such holder or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

Section 11.5 Liens. The Company shall not directly or indirectly create, incur, assume or suffer to exist (upon the happening of a contingency or otherwise) any Lien upon any of the Collateral, whether now owned or hereafter acquired, except Permitted Liens.

Section 11.6 Limitation on Amendments to the Material Project Documents, Organizational Documents and Tax Credit Transfer Documents.

(a) The Company shall not amend or otherwise modify, in any material or adverse respect, or grant any material or adverse waiver or consent under, any Material Project Document without the consent of the Required Holders (in consultation with the Independent Engineer), other than the PPA Amendment.

(b) The Company shall not amend, supplement or otherwise modify (pursuant to a waiver or otherwise) its organizational documents, including the separateness provisions thereof, or permit or suffer to exist any amendment or modification of any of its organizational documents unless any such amendment or modification (i) does not adversely affect any material rights or remedies of any of the parties under any Material Project Document and (ii) could not otherwise reasonably be expected to have a Material Adverse Effect.

(c) The Company shall not amend or otherwise modify, in any material or adverse respect, or grant any material or adverse waiver or consent under, any Tax Credit Transfer Document without the consent of the Required Holders.

Section 11.7 Additional Material Project Documents. The Company shall not enter into or become a party to any Additional Material Project Document (with any series of related Additional Material Project Documents entered into as part of a single transaction or series of related transactions to be considered as one "Additional Project Document" for purposes of this Section 11.7) without the consent of the Required Holders unless such Additional Material Project Document (a) is in the best interest of, and on terms fair and reasonable to the Company, as certified by a Responsible Officer of

the Company and (b) if such Additional Material Project Document provides for payments of more than \$2,000,000 in the aggregate to be made or received by the Company thereunder in any year, (i) the Company has delivered a copy of the Additional Material Project Document to each Holder and (ii) to the extent required, the Company has given or caused to be given written notice to the counterparty thereto of the security interest therein granted under the Security Documents, or used commercially reasonable efforts to obtain a consent to assignment therefor within thirty (30) days after the execution of such Additional Material Project Document.

Section 11.8 Investments. The Company shall not make any advance, loan, extension of credit (by way of Guaranty or otherwise) or capital contribution to, or purchase any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person, asset or Property other than (a) Permitted Investments, (b) any rights it may have under the Material Project Documents and (c) immaterial assets and properties.

Section 11.9 Incurrence of Indebtedness. The Company shall not create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except Indebtedness consisting of working capital facilities, letters of credit facilities or reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including for funding of the Debt Service Reserve Account, the Operating and Major Maintenance Reserve Account, the CapEx and Warranty Reserve Account or for credit support required to be provided in connection with obligations under the Material Project Documents ("**Pari Passu LC Facility**"); provided that any incurrence of a Pari Passu LC Facility shall be subject to the satisfaction or waiver of the following:

(a) Delivery of a certificate from an Authorized Officer of the Company that (i) that no Default or Event of Default has occurred and is continuing or will result from the incurrence of such Pari Passu LC Facility, (ii) the additional Indebtedness is not expect to have a Material Adverse Effect, (iii) as to the use of the proceeds of such Indebtedness and (iv) to the extent that such Indebtedness is incurred to provide credit support required to be provided in connection with obligations under the Material Project Documents, a certification that such Indebtedness, together with other funds available for the Project, are expected to comply with obligations under the applicable Material Project Documents;

(b) Delivery of any documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the obligations relating to the applicable Pari Passu LC Facility;

(c) Each of (i) the Debt Service Reserve Account, after giving effect to such incurrence, will be funded in an amount equal to the then-applicable Debt Service Reserve Requirement, (ii) the Operating and Major Maintenance Reserve Account will be funded in an amount equal to the then-applicable Operating Reserve Requirement, and (iii) the CapEx and Warranty Reserve Account will be funded in an amount equal to the then-applicable CapEx Reserve Requirement; and

(d) The aggregate amount of the Pari Passu LC Facility shall not exceed \$5,000,000 at any time.

Section 11.10 Sale of Assets. The Company shall not dispose of any of its property, whether now owned or hereafter acquired, except:

- (a) the liquidation, sale or use of cash and Permitted Investments;
- (b) the Disposition of obsolete, damaged, worn out or surplus property, assets or rights (including surplus real property), or property, assets or rights not used or useful in the business of the Company in the ordinary course of business or where such property is not otherwise material to the operation of the relevant Project or the business of the Company;
- (c) sales of (and the granting of any option or other right to purchase, lease or otherwise acquire) power, electric capacity, transmission capacity, emissions credits, energy storage capacity or energy storage services or ancillary services or other inventory or products in the ordinary course of business, including pursuant to the Power Purchase Agreement;
- (d) sales of tax credits and other tax monetization structures; or
- (e) other Dispositions on an arm's-length basis for cash consideration having a fair market value not to exceed (i) \$1,000,000 in any fiscal year and (ii) \$2,000,000 in the aggregate for all such Dispositions; *provided* that such Disposition is not reasonably expected to materially and adversely affect the operation and maintenance of the relevant Project.

Section 11.11 Capital Expenditures. The Company shall not make any Capital Expenditures other than (a) Permitted Capital Expenditures and (b) Capital Expenditures to the extent financed in full with the proceeds of Voluntary Equity Contributions made to the Company which could not reasonably be expected to have a Material Adverse Effect.

Section 11.12 Restricted Payments. Except as set forth in Section 10.9(d), the Company shall not make any Restricted Payments unless each of the following conditions ("**Restricted Payment Conditions**") set forth below have been satisfied:

- (a) COD has been achieved;
- (b) no Default or Event of Default has occurred and is continuing;
- (c) the Company delivers to the Collateral Agent a certificate (setting out its calculations therein) confirming that, on the proposed date of such Restricted Payment, (i) the Historical Debt Service Coverage Ratio for the Calculation Period ending on the Calculation Date most recently preceding such proposed date is not less than 1.15:1.00 and (ii) the Pro Forma Debt Service Coverage Ratio for the first Calculation Period ending after such proposed date shall not be less than 1.15:1.00; and
- (d) (i) the Debt Service Reserve Account is funded (with cash or an Acceptable Letter of Credit (or by any combination of the foregoing)) in an amount equal to the Debt Service Reserve Requirement, (ii) the Operating and Major Maintenance Reserve Account is funded (with cash or an Acceptable Letter of Credit (or by any combination of the foregoing)) in an amount equal to the Operating Reserve Requirement and (iii) the CapEx and Warranty Reserve Account is funded (with cash or an Acceptable Letter of Credit (or by any combination of the foregoing)) in an amount equal to the CapEx Reserve Requirement.

Section 11.13 Swap Contracts. The Company shall not enter into any Swap Contract or engage in any similar transaction for speculative purposes.

Section 11.14 Changes in Fiscal Periods; Accounting Policies; Location; Name.

(a) The Company shall not without the consent of the Required Holders, the Company shall not permit its fiscal year to end on a day other than [December 31], change its method of determining fiscal quarters or make, permit any change in accounting policies or reporting practices except as required by GAAP or change its federal employer identification number, except for any such changes which are not materially adverse to the holders of Notes.

(b) Except upon 20 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of all additional financing statements (executed where appropriate) and other documents reasonably requested by the Collateral Agent and the Required Holders to maintain the validity, perfection and priority of the security interests provided for herein, (i) change its jurisdiction of organization, (ii) change its location of principal place of business or (iii) change its name.

Section 11.15 Maintenance of Accounts. The Company shall not establish or maintain any deposit, securities, commodities or similar account other than (a) the Collateral Accounts established in accordance with the terms of the Depositary Agreement, (b) any deposit or securities accounts necessary or useful in the conduct of the Company's business that may be established after the Closing (the "Deposit Accounts"); *provided* that, solely with respect to the Deposit Accounts, the Company shall obtain and deliver control agreements to the Collateral Agent concurrently with the establishment thereof and (c) Excluded Accounts.

Section 11.16 Lease Agreements. The Company shall not enter into any lease agreements other than (a) the Site Lease and (b) lease agreements pursuant to which no more than \$1,000,000 in the aggregate in rental payments shall be made in any fiscal year.

Section 11.17 Sale and Leasebacks. The Company shall not enter into any arrangement with any Person providing for the leasing by the Company of real or personal property that has been or is to be sold or transferred by the Company to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of the Company.

Section 11.18 Debt Service Coverage Ratio. Commencing with the first Calculation Date to occur following the first anniversary of COD, the Debt Service Coverage Ratio shall not be less than 1.00 to 1.00.

SECTION 12. EVENTS OF DEFAULT.

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in Section 8.1(e) or Section 11 hereof; or

(d) the Company defaults in the performance of or compliance with any term contained in Section 8.1 hereof (other than Section 8.1(e)) and such default is not remedied within five Business Days; or

(e) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in Sections 12(a), (b), (c) and (d)) or in any Security Document or the Pledgor defaults in the compliance with any term contained in any Security Document and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from the Collateral Agent or any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this Section 12(e)); or

(f) any representation or warranty made in writing by or on behalf of the Company or the Pledgor or by any officer of the Company or the Pledgor in this Agreement, any Security Document or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made (other than those qualified by a reference to materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects); *provided that* (i) if the fact, event or circumstance resulting in such false or incorrect representation or warranty is capable of being cured, corrected or otherwise remedied, (ii) such fact, event or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected or otherwise remedied within 30 days from the date on which the Company or the Pledgor first obtains knowledge thereof and (iii) such representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Effect during the pendency of such cure period, then such false or incorrect representation or warranty shall not constitute an Event of Default hereunder; or

(g) (i) the Company is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness (other than the Notes and any other Indebtedness under the Financing Documents) that is outstanding in an aggregate principal amount of at least \$2,000,000 (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (ii) the Company is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$2,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition, such Indebtedness has become or has been declared due and payable or one or more Persons are entitled to declare such Indebtedness to be due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) the Company has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$2,000,000 (or its equivalent in the relevant currency of payment), or (y) one or more Persons have the right to require the Company so to purchase or repay such Indebtedness; or

(h) (i) Any Affiliated Bankruptcy Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Affiliated Bankruptcy Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Affiliated Bankruptcy Party any case, proceeding or other action of a nature referred to in clause (i)(A) above that (1) results in the entry of an order for relief or any such adjudication or appointment or (2) remains undismissed or un-discharged for a period of sixty (60) days; or (iii) there shall be commenced against any Affiliated Bankruptcy Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) any Affiliated Bankruptcy Party shall take any corporate action in furtherance of, or consenting to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Affiliated Bankruptcy Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(i) one or more final judgments or orders for the payment of money aggregating in excess of \$2,000,000 (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against the Company and which judgments are not, within sixty (60) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay; or

(j) if (i) the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans allocable to such liabilities, (ii) the Company shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (iii) the Company establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company thereunder, (iv) the Company fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up or (v) the Company becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; and any such event or events described in clauses (i) through (v) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect; or

(k) Any Applicable Permit necessary for the construction or operation of any Project shall be modified in an adverse manner, revoked, suspended, terminated, non-renewed, or cancelled by the issuing agency or other Governmental Authority having jurisdiction or the Company shall fail to obtain, renew, maintain or comply in all respects with any Applicable Permit, as applicable, if such event, together with all such other events, could reasonably be expected to result in a Material Adverse Effect; *provided* that an Event of Default with respect to an Applicable Permit shall not be deemed to have occurred if such Applicable Permit has been renewed, issued or replaced within thirty (30) days of the occurrence of a Default under this Section by a replacement Applicable Permit in form and substance reasonably acceptable to the Required Holders, so long as no Material Adverse Effect

shall have occurred during such 30-day period; *provided, further*, that so long as the Company has applied for and is diligently pursuing renewal of the Applicable Permit in good faith and is operating under an existing version of the same Applicable Permit, whether active or expired, for the duration that the renewal application is pending before the relevant Governmental Authority pursuant to any permit shield provisions available under applicable Environmental Laws, then such 30-day period shall be extended to the full duration allowed under any such applicable permit shield provisions; or

(l) Except as set forth on Schedule 6.3, the Company or any other party thereto shall breach or be in default under any material term, condition, provision, covenant, representation or warranty contained in any Material Project Document (including, for the avoidance of doubt, warranty obligations) and the effect of such breach or default could be reasonably expected to have a Material Adverse Effect on the Company or the relevant Project and any applicable grace or cure period with respect to such breach or default under such Material Project Document has expired; or

(m) (i) The Power Purchaser or, prior to the Substantial Completion Date (as such term is defined in the EPC Contract) with respect to the EPC Contract, the EPC Contractor shall have suffered a continuing Bankruptcy Event; *provided* that such Event of Default shall not be deemed to have occurred if the Company has replaced the applicable Material Project Document with any such Person within forty-five (45) days of the occurrence of the Bankruptcy Event, with an Additional Project Document or other agreement that is in form and substance reasonably acceptable to the Required Holders (such acceptance not to be unreasonably withheld or delayed); or

(n) Any Material Project Document shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default thereunder; or

(o) an Event of Abandonment has occurred; or

(p) an Event of Taking has occurred with respect to a material portion of the Company's property and such Event of Taking could reasonably be expected to result in a Material Adverse Effect; or

(q) any Financing Document shall, (i) except in accordance with its terms, as expressly permitted hereunder or thereunder or upon the satisfaction of the obligations, cease to be in full force and effect or shall be terminated or (ii) shall be declared void by a Governmental Authority or (iii) any party thereto (other than any holder or holders of Notes or the Collateral Agent) shall claim in writing such unenforceability or invalidity; or

(r) The Project shall not have achieved Substantial Completion (as defined in the EPC Contract) by the Date Certain.

SECTION 13. REMEDIES ON DEFAULT, ETC.

Section 13.1 Acceleration. (a) If an Event of Default with respect to the Company described in Section 12(h) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 12(a) or (b) has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 13.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

Section 13.2 Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 13.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or other Financing Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 13.3 Rescission. At any time after any Notes have been declared due and payable pursuant to Section 13.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 18 and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 13.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

Section 13.4 No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Note, or any other Financing Document upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 16, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 13, including reasonable attorneys' fees, expenses and disbursements.

SECTION 14. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

Section 14.1 Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee and the principal amount (and stated interest) of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner and the principal amount (and stated interest) of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes. The register shall be maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

Section 14.2 Transfer and Exchange of Notes. Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 19(c)(iii)), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within 10 Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit A. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp, documentary or similar tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 7.2.

Section 14.3 Replacement of Notes. Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 19(c)(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$50,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof, within 10 Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

SECTION 15. PAYMENTS ON NOTES.

Section 15.1 Place of Payment. Subject to Section 15.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of Wilmington Trust, National Association in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

Section 15.2 Payment by Wire Transfer. So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 15.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in the Purchaser Schedule, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 15.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 14.2. The Company will afford the benefits of this Section 15.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 15.2.

Section 15.3 FATCA Information. By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number on an Internal Revenue Service W-9 or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United States Person, an Internal Revenue Service Form W-8 (and if applicable, a portfolio interest exemption certification), such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount (if any) to deduct and withhold from any such payment made to such holder. Nothing in this Section 15.3 shall require any holder to provide information that is confidential or

proprietary to such holder unless the Company is required to obtain such information under FATCA and, in such event, the Company shall treat any such information it receives as confidential.

SECTION 16. EXPENSES, ETC.

Section 16.1 Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable and documented attorneys' fees of one counsel for the Purchasers and holders of Notes, taken as a whole, and, if reasonably required by the Required Holders, local or other counsel) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Notes or any other Financing Document (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Notes, or any other Financing Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Notes, or any other Financing Document or by reason of being a holder of any Note; (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and by any other Financing Document; and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO. If required by the NAIC, the Company shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes), (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note and (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company; in each case, other than those that result from or have arisen by reason of such Person's bad faith, gross negligence or willful misconduct, as determined in the final and non-appealable judgement of a court of competent jurisdiction.

Section 16.2 Certain Taxes. The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement or the execution and delivery (but not the transfer) or the enforcement of any of the Notes in the United States or any other applicable jurisdiction where the Company has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement or of any of the Notes or any other Financing Document, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 16, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

Section 16.3 Survival. The obligations of the Company under this Section 16 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, the Notes, or any other Financing Documents and the termination of this Agreement.

SECTION 17. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein and in any other Financing Document shall survive the execution and delivery of this Agreement, the Notes, and the other Financing Documents, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement or any other Financing Document shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and the other Financing Document embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 18. AMENDMENT AND WAIVER.

Section 18.1 Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

(a) no amendment or waiver of any of Sections 1, 2, 3, 7 or 22 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing; and

(b) no amendment or waiver may, without the written consent of each Purchaser and the holder of each Note at the time outstanding, (i) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (x) interest on the Notes or (y) the Make-Whole Amount, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver or (iii) amend any of Section 9 (except as set forth in the second sentence of Section 9.2, Section 12(a), Section 12(b) and Section 13, or Section 18).

Section 18.2 Solicitation of Holders of Notes.

(a) *Solicitation.* The Company will provide each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 18 to each holder of a Note promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant

any security or provide other credit support, to any holder of a Note as consideration for or as an inducement to the entering into by such holder of any waiver or amendment of any of the terms and provisions hereof or any Note unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Note even if such holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer.* Any consent given pursuant to this Section 18 by a holder of a Note that has transferred or has agreed to transfer its Note to (i) the Company, (ii) any Affiliate or (iii) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with the Company and/or any of its Affiliates (either pursuant to a waiver under Section 18.1 or subsequent to Section 9.5 having been amended pursuant to Section 18.) in each case in connection with such consent, shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

Section 18.3 Binding Effect, Etc. Any amendment or waiver consented to as provided in this Section 18 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any holder of a Note and no delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note.

Section 18.4 Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, the Notes or any other Financing Document, or have directed the taking of any action provided herein or the Notes or any other Financing Document to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

SECTION 19. NOTICES.

Except to the extent otherwise provided in Section 8.3 all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (charges prepaid). Any such notice must be sent:

(i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in the Purchaser Schedule, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of [____], or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 19 will be deemed given only when actually received.

SECTION 20. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Notes themselves) and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 20 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 21. CONFIDENTIAL INFORMATION.

For the purposes of this Section 21, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or (d) constitutes financial statements delivered to such Purchaser under Section 8.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, *provided* that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 21, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 21), (v) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 21), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser’s investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to

effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, this Agreement or any other Financing Document. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 21 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 21.

In the event that as a condition to receiving access to information relating to the Company in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through Intralinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 21, this Section 21 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 21 shall supersede any such other confidentiality undertaking.

SECTION 22. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a "**Substitute Purchaser**"; *provided*, that no Person, or an Affiliate of any Person, that is a competitor of the Company or its Affiliates shall be a Substitute Purchaser) as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in Section 7. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 22), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Notes then held by such Substitute Purchaser, upon receipt by the Company of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this Section 22), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

SECTION 23. MISCELLANEOUS.

Section 23.1 Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not, except that, subject to Section 11.2, the Company may not assign or otherwise transfer any of its rights or obligations hereunder or under the Notes without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Section 23.2 Accounting Terms. All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP and (ii) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 10, Section 11 and the definition of “Indebtedness”), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option*, International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

Section 23.3 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 23.4 Construction, Etc. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 14, (b) subject to Section 23.1, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 23.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

Section 23.6 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York

excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

Section 23.7 Jurisdiction and Process; Waiver of Jury Trial.

(a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 23.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 23.7(a) by mailing a copy thereof by registered, certified, priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 19 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 23.7 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, the Notes or any other document executed in connection herewith or therewith.

* * * * *

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,
CALISTOGA RESILIENCY CENTER, LLC

By _____
[Title]

This Agreement is hereby
accepted and agreed to as
of the date hereof.

[ADD PURCHASER SIGNATURE BLOCKS]

SCHEDULE A DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“Acceptable Letter of Credit” means a letter of credit (which is not secured by the Collateral) issued by a bank or other financial institution rated at least A- by S&P or Fitch or A3 by Moody’s.

“Additional Material Project Document” means any contract or agreement relating to the ownership, operation, maintenance, repair, financing or use of the Project entered into by the Company with any other Person subsequent to the date of this Agreement (including any contract(s) or agreement(s) entered into in substitution for any Material Project Document that has been terminated in accordance with its terms or otherwise) that (i) requires payments to be made or received in an amount in excess of two million Dollars (\$2,000,000) in the aggregate per year or (ii) is for a term that is greater than two (2) years; *provided that* “Additional Material Project Documents” shall not include Tax Credit Transfer Documents.

“Affiliate” means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and, with respect to the Company, shall include any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Person of which the Company beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

“Affiliated Bankruptcy Party” means (a) the Company and (b) the Pledgor.

“Aggregate Offer Amount” is defined in Section 9.3(b)(ii) (*Offer to Prepay*).

“Agreement” means this Note Purchase Agreement, including all Schedules attached to this Agreement.

“Annual Operating Budget” is defined in Section 8.1(d) (*Financial and Business Information – Annual Operating Budget*).

“Anti-Corruption Laws” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

“Anti-Money Laundering Laws” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

“Applicable Permit” means, at any time, any Permit to be obtained by or on behalf of the Company, including any such Permit relating to zoning, environmental or natural resource protection,

pollution, sanitation, FERC, CPUC, CAISO, PUHCA, safety, siting or building, importation of technology, equipment and materials, that is (a) material and necessary at such time to the development, construction or operation of the Project to construct, test, operate, maintain, repair, own or use the Project as contemplated by the Transaction Documents, to enter into any Transaction Document or to consummate any transaction contemplated thereby or (b) necessary so that (i) none of the Collateral Agent, the Holders, or any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or under California laws or regulations in respect of the rates or the financial or organizational regulation of electric utilities solely as a result of the construction, operation, ownership, leasing or control of the Project or (ii) none of the Company nor any Affiliate of the Company that is a party to an Transaction Document may be deemed by any Governmental Authority to be subject to, or not exempt from, regulation under PUHCA (other than the FERC regulations implementing PUHCA relating to obtaining EWG Status, notice of holding company status and regulatory access to books and records), or under any California laws or regulations respecting the rates or the financial or organizational regulation of electric utilities.

“Authorized Officer” means a natural Person designated by the Company as such on forms supplied by the Collateral Agent, in each case acting solely in his or her representative capacity and not individually.

“Bankruptcy Event” means, with respect to any Person, such Person (a) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, (b) has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, (c) makes a general assignment for the benefit of creditors or (d) admits in writing its inability to pay its debts generally as they become due.

“Blocked Person” means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

“Bridge Facility” means that certain Credit Agreement dated as of March 14, 2025 among the Company, Jefferies Finance LLC, as administrative agent and collateral agent, and the lenders party thereto.

“Bridge Facility Notes” means the “Notes” as defined in the Bridge Facility.

“Bridge Facility Provider” means Jefferies Finance LLC.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

“Calculation Date” means each February 28, May 31, August 31 and November 30 to occur after the Initial Closing Date.

“Calculation Period” means the period of twelve months ending on a Calculation Date.

“CapEx and Warranty Reserve Account” is defined in the Depositary Agreement.

“CapEx Reserve Requirement” means (i) from the date of the Closing to May 31, 2026, \$500,000 and (ii) from and after June 1, 2026, \$750,000.

“Capital Expenditures” means, for any period, the aggregate amount of all expenditures of the Company payable during such period which, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the consolidated statement of cash flows of the Company, but excluding each of the following items, to the extent such item would otherwise be included as “Capital Expenditures”:

(a) costs and expenses constituting Operating Costs (other than Permitted Capital Expenditures) or Project Costs or costs and expenses paid with amounts on deposit in Collateral Accounts in accordance with the Depositary Agreement;

(b) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is less than any credit granted by the seller of such equipment for the equipment being traded in at such time;

(c) payments in respect of Capital Lease Obligations permitted under this Agreement; and

(d) expenditures to the extent the Company has received or has an unconditional commitment to receive reimbursement in cash from a Person that is not an Affiliate of the Company and for which the Company has not provided or is not required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person without such reimbursement.

“Capital Lease” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“Capital Lease Obligations” means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Change of Control” means (a) (i) prior to the Initial Delivery Date, Sponsor shall cease to legally and beneficially own and control, directly or indirectly, 100% of the common voting interests in Pledgor other than due to a sale or other transfer to a Qualified Owner or (ii) after the Initial Delivery Date, the Permitted Holders shall cease to legally and beneficially own and control, directly or indirectly, 50.1% of the common voting interests in Pledgor or (b) Pledgor shall cease to legally and beneficially directly own and control 100% of the common voting interests in the Company.

“City” means the City of Calistoga, California.

“**Closing**” is defined in Section 3 (*Closing*).

“**COD**” means the “Commercial Operation Date” as defined in the Interconnection Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collateral**” means all property which is subject or is required to become subject to the security interests or Liens granted pursuant to any of the Security Documents.

“**Collateral Accounts**” is defined in Section 11.15 (*Maintenance of Accounts*).

“**Collateral Agent**” means Wilmington Trust, National Association.

“**Company**” is defined in the first paragraph of this Agreement.

“**Conditions Subsequent**” is defined in Section 10.14 (*Conditions Subsequent*).

“**Confidential Information**” is defined in Section 21 (*Confidential Information*).

“**Consents**” means each consent to collateral assignment required to be entered into pursuant to this Agreement, in each case by and among the Company, the Collateral Agent and the Persons identified therein, including, with respect to any Additional Material Project Document, a consent and agreement of each such party to such Additional Material Project Document (other than the Company), in each case, substantially in the form of Exhibit B or otherwise in form and substance reasonably satisfactory to the Required Holders.

“**Construction Budget and Schedule**” means a reasonably detailed schedule of the development and construction of the Project and a reasonably detailed total budget for the Project following the drawdown in full of the Notes, as prepared by the Company and approved by the Purchasers (in consultation with the Independent Engineer) delivered on or before the Closing, in the form of Exhibit C hereto; and containing a reasonably detailed description of Project Costs incurred and expected to be incurred with respect to the development and construction of the Project, for the period commencing on the date of such Construction Budget and Schedule through the Guaranteed Substantial Completion Date (as such term is defined in the EPC Contract) for the Project.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “**Controlled**” and “**Controlling**” shall have meanings correlative to the foregoing.

“**Controlled Entity**” means (a) any of the Company’s respective Controlled Affiliates and (b) the parent entity of the Company and its Controlled Affiliates.

“**Conversion**” means the conversion of the Indebtedness existing under the Bridge Facility as evidenced by the Bridge Facility Notes to the Indebtedness contemplated pursuant to this Agreement, including the amendment and restatement of the Bridge Facility Notes in the form of the Notes.

“**CPUC**” means the California Public Utilities Commission.

“Date Certain” means October 4, 2025

“Debt Service” means, as of any period of determination, the aggregate amount of fees, interest and principal on account of the Notes (including any scheduled payments thereon but excluding any extraordinary mandatory redemptions) and the Pari Passu LC Facility, if applicable, due and payable by the Company during such period of determination.

“Debt Service Coverage Ratio” means, as at any Calculation Date, (a) the ratio of (i) Net Cash Flow for the Calculation Period ended on such Calculation Date to (ii) Debt Service for the Calculation Period ended on such Calculation Date (the **“Historical Debt Service Coverage Ratio”**) and (b) the ratio of (i) Net Cash Flow for the period of twelve months beginning on such Calculation Date to (ii) projected Debt Service for the period of twelve months beginning on such Calculation Date (the **“Pro Forma Debt Service Coverage Ratio”**).

“Debt Service Reserve Account” is defined in the Depositary Agreement.

“Debt Service Reserve Requirement” means as of the date of determination, 100% of Maximum Annual Debt Service.

“Default” means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

“Default Rate” means interest at a rate per annum equal to two percent (2%) above the rate of interest stated in clause (a) of the first paragraph of the Notes.

“Deposit Accounts” is defined in Section 11.15 (*Maintenance of Accounts*)

“Depositary Agreement” means the Depositary Agreement, dated on or about the date hereof, among the Company, the Collateral Agent, and the Depositary Bank.

“Depositary Bank” means Wilmington Trust, National Association.

“Disclosure Documents” is defined in Section 6.3 (*Disclosure*).

“Disposition” means any disposition of property or series of related dispositions of property that yields gross proceeds to the Company (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds).

“Distribution Reserve Account” has the meaning ascribed to such term in the Depositary Agreement.

“Effective Material Project Document” means, with respect to any Material Project Document, that such Material Project Document (a) has been executed and delivered by each party thereto, (b) all conditions precedent to the effectiveness of such Material Project Document have been satisfied or waived and (c) such Material Project Document is in full force and effect.

“Environmental Claim” means any and all liabilities, obligations, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations (other than internal reports prepared by or on

behalf of the Company), proceedings, removal or remedial actions or orders, or damages, penalties, out-of-pocket costs, expenses, or disbursements, arising under any Environmental Law or any Permit issued under any such Environmental Law and relating to any Site or other property that is the subject of the Site Lease, including (a) any and all such claims for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all such claims arising from alleged injury or threat of injury to health and safety, the environment, including ambient air, surface water, land surface, subsurface strata, and natural resources, or regarding the investigation, delineation, remediation, Release or potential Release of any Hazardous Materials (in each case, to the extent relating to human exposure to Hazardous Materials.)

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment and the use or Release into the environment of any Hazardous Materials.

“EPC Contract” means the Engineering, Procurement, and Construction Agreement between Energy Vault, Inc., a Delaware corporation, and Calistoga Resiliency Center, LLC, a Delaware Limited Liability Company, dated as of November 18, 2024.

“EPC Contractor” means Energy Vault, Inc., a Delaware limited liability company.

“Equity Interests” means, with respect to any Person, all of the shares, membership interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“ERISA” means the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

“Event of Abandonment” means, with respect to the Project, the suspension or cessation for a period of at least sixty (60) consecutive days of all or substantially all of the operation and maintenance activities at the Project; *provided, however*, that any such suspension or cessation that arises from an Event of Loss, a requirement of law, an event of force majeure, curtailment or failure to be dispatched, or other bona fide business reasons shall not constitute an Event of Abandonment, in each case, so long as the Company is taking commercially reasonable actions to overcome or mitigate the effects of the cause of suspension or cessation so that maintenance and/or operations, as the case may be, can be resumed. Any period of cessation or suspension shall end on the date that operation and maintenance activities of a substantial nature are resumed.

“Event of Default” is defined in Section 12 (Events of Default).

“Event of Loss” means any event that causes all or substantially all of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever and, in each case, shall include an Event of Taking.

“**Event of Taking**” means any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action of or proceeding by any Governmental Authority relating to all or substantially all of the Project, any equity interests in the Company or any other part of the Collateral.

“**EWG**” means an exempt wholesale generator as defined under 18 C.F.R. § 366.1 (2024)

“**Excluded Accounts**” is defined in the Security Agreement.

“**Fair Labor Standards Act**” means the federal Fair Labor Standards Act of 1938 and the rules and regulations promulgated thereunder from time to time in effect.

“**FATCA**” means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (b) any agreements entered into pursuant to section 1471(b)(1) of the Code.

“**FERC**” means the Federal Energy Regulatory Commission and any successor thereto.

“**Financial Model**” means the financial model of the Company dated [], 2025, attached hereto as Annex I, as approved by the Purchasers.

“**Financing Documents**” means (a) this Agreement, (b) the Notes, (c) the Security Documents, and (d) any other documents, agreements or instruments entered into, filed or recorded in connection with any of the foregoing.

“**Fitch**” means Fitch Investors Service, Inc. and its subsidiaries, or any successor organization thereto.

“**Flood Hazard Property**” is defined in Section 10.14(a)(vii)(D) (*Conditions Subsequent*).

“**Flood Insurance Laws**” shall mean (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), as the same may be amended or recodified from time to time, (d) the Flood Insurance Reform Act of 2004 and (e) the Biggert Waters Reform Act of 2012 and, in each case, any regulations promulgated thereunder.

“**FPA**” means the Federal Power Act, as amended, and FERC’s regulations promulgated thereunder.

“**Fronted Equity Contributions**” is defined in the Depositary Agreement.

“**Funding Instructions Letter**” is defined in Section 3(b).

“**Funds Flow Memorandum**” means the memorandum setting forth the flow of funds on the Closing.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America.

“Governmental Authority” means

- (a) the government of
 - (i) the United States of America or any state or other political subdivision thereof, or
 - (ii) any other jurisdiction in which the Company conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“Governmental Official” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

“Governmental Rules” means any law, rule, regulation, ordinance, order, binding code interpretation, judgment, decree, or similar form of decision of any Governmental Authority, including FERC, CPUC, CAISO and the North American Reliability Corporation.

“Guaranty” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such indebtedness or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or
- (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

“Hazardous Materials” means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is regulated under Environmental Laws, including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead-based paint, radon gas or similar regulated substances.

“Historical Debt Service Coverage Ratio” has the meaning ascribed to such term in the definition of Debt Service Coverage Ratio.

“Historical Financial Statements” means [_____].

“Holder” means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 14.1 (*Registration of Notes*), *provided, however*, that if such Person is a nominee, then for the purposes of Section 8 (*Information as to Company*), Section 13 (*Remedies on Default, Etc.*), Section 18.2 (*Solicitation of Holders of Notes*) and Section 19 (*Notices*) and any related definitions in this Schedule A, “holder” shall mean the beneficial owner of such Note whose name and address appears in such register.

“Indebtedness” with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) (i) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases and (ii) all liabilities which would appear on its balance sheet in accordance with GAAP in respect of Synthetic Leases assuming such Synthetic Leases were accounted for as Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) the aggregate Swap Termination Value of all Swap Contracts of such Person; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

“Independent Engineer” means E3 Consulting or any other nationally recognized independent engineer with relevant experience appointed after the Closing by the Company with the consent of the Required Holders.

“INHAM Exemption” is defined in Section 7.2(e) (*Source of Funds*).

“Initial Delivery Date” means the date on which the Project achieves the “Initial Delivery Date” under and as defined in the Power Purchase Agreement.

“Institutional Investor” means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form and (d) any Related Fund of any holder of any Note.

“Insurance Consultant” means Blades, Crout & Proulx LLC, or any other nationally recognized insurance consultant with relevant experience.

“Interconnection Agreement” means the Gas and Electric Extension Agreement, dated July 10, 2024, by and between Company and Power Purchaser.

“Investment Grade Rating” means a Person whose long-term unsubordinated debt has been assigned a credit rating of “BBB-” or better by S&P or “Baa3” or better by Moody’s.

“Investor Presentation” is defined in Section 6.3 (*Disclosure*).

“Legal Requirements” means, as to any Person, any applicable law, statute, code, treaty, rule, regulation, ordinance including any Governmental Rule (including, without limitation, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in implementation thereof and (b) any requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, in each case, pursuant to Basel III), or determination of an arbitrator or a court or other Governmental Authority, or any requirement under a material Permit, in each case, applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

“Lien” means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

“Make-Whole Amount” is defined in Section 9.8 (*Make-Whole Amount*).

“**Material**” means material in relation to the business, operations, affairs, financial condition, assets, or properties of the Company taken as a whole.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company taken as a whole, (b) the ability of the Company to perform its obligations under this Agreement and the Notes or (c) the validity or enforceability of this Agreement, the Notes or any other Financing Document.

“**Material Project Documents**” means, collectively, the Power Purchase Agreement, the EPC Contract, the O&M Agreement, the Interconnection Agreement, the Site Lease and any Additional Project Documents, as of the applicable time of determination, then in force and effect; *provided that* “Material Project Documents” shall not include Tax Credit Transfer Documents.

“**Material Project Participant**” means a party to a Material Project Document other than the Company.

“**Maturity Date**” is defined in the first paragraph of each Note.

“**Maximum Annual Debt Service**” means as of the date of determination, an amount equal to the maximum aggregate Debt Service payable during the then-current or any future fiscal year.

“**MBR Authority**” has the meaning given to such term in Section 6.18 (*Energy Regulatory Status*).

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage**” means the deed of trust, dated as of the date hereof, and each other deed of trust made by the Company in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, substantially in the form of Exhibit D (*Form of Mortgage*).

“**Mortgaged Property**” or “**Mortgaged Properties**” means the real property in Calistoga, California, identified as the “Property” in the Site Lease and identified in Schedule 1, attached hereto and made a part hereof, together with any after acquired real property as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the provisions of Section 10.7(b) (*Further Assurances; Additional Collateral*) or Section 10.14(a) (*Conditions Subsequent*) of this Agreement. For the avoidance of doubt, after acquired Property Interests shall not be considered Mortgaged Property until such time as the Company actually acquires such after acquired Property Interests and same are subjected to the Lien of a Mortgage pursuant to Section 10.7(b) (*Further Assurances; Additional Collateral*).

“**Multiemployer Plan**” means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“**NAIC**” means the National Association of Insurance Commissioners.

“**NAIC Annual Statement**” is defined in Section 7.2(a) (*Source of Funds*).

“**Net Available Amount**” means the aggregate amount of Loss Proceeds (as such term is defined in the Depositary Agreement) received by the Company in respect of an Event of Loss or Event

of Taking net of reasonable expenses incurred by the Company in connection with the collection of such Loss Proceeds.

“Net Cash Flow” means in respect of any period, (i) the sum of the following (without duplication): (A) aggregate Project Revenues received by the Company during such period; *plus* (B) any other revenues received by the Company, *less* (ii) the sum of the following (without duplication): (A) the Operating Costs paid during such period with Project Revenues; and (B) all Capital Expenditures (to the extent not funded from any source other than Project Revenues paid during such period).

“Net Cash Proceeds” means in connection with any asset disposition, the aggregate cash proceeds received by the Company in respect of any asset disposition (including any cash received upon the sale or other disposition of any non-cash consideration received in any asset disposition), net of the direct costs relating to such asset disposition and payments made to retire Indebtedness (other than the Notes) required to be repaid in connection therewith, including legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of such asset disposition, Taxes paid or payable as a result of such asset disposition, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements and, including, without duplication, any Permitted Tax Distributions arising as a result of such asset disposition, and amounts reserved for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

“Net Equity Proceeds” means an amount equal to any cash proceeds from the issuance of any Equity Interests of the Company, net of underwriting discounts and commissions and other reasonable costs, expenses and stamp or similar Taxes associated therewith, including reasonable legal fees and expenses. For the avoidance of doubt, cash proceeds in connection with the sale of Tax Credits shall not constitute Net Equity Proceeds.

“Non-U.S. Plan” means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company primarily for the benefit of employees of the Company residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment and (b) is not subject to ERISA or the Code.

“Note Proceeds Account” has the meaning ascribed to such term in the Depositary Agreement.

“Note Purchase Agreement” is defined in the third paragraph of each Note.

“Notes” is defined in Section 1 (*Authorization of Notes*).

“O&M Agreement” means the Operation and Maintenance Agreement, dated as of November 7, 2024, by and between the O&M Provider and the Company, as further amended, amended and restated, or otherwise modified through the date of this Agreement.

“O&M Provider” means Energy Vault, Inc.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“OFAC Sanctions Program” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“Offer Date” is defined in Section 9.3(a) (*Offer to Prepay*).

“Offer to Prepay” is defined in Section 9.3(b) (*Offer to Prepay*).

“Officer’s Certificate” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“Operating Costs” means, for any period, the sum, computed without duplication among any of the following categories or from period to period, of the following: (a) cash operation, maintenance (including major maintenance costs) and administrative costs relating to the Project or any portion thereof and ordinary course fees, royalties and costs, including those paid or payable to the O&M Provider pursuant to the O&M Agreement; plus (b) Permitted Capital Expenditures and expenses for operating the Project and maintaining the Project in good repair and operating condition in accordance with Prudent Industry Practices paid or payable during such period, including to the counterparties to the Material Project Documents as required pursuant to the Material Project Documents; plus (c) insurance costs paid or payable in respect of insurance maintained or required to be maintained in respect of the Project during such period; plus (d) applicable sales and excise taxes (if any) paid or payable or reimbursable by the Company during such period; plus (e) franchise taxes paid or payable by the Company during such period; plus (f) property taxes paid or payable by the Company during such period; plus (g) any other direct taxes (if any) paid or payable by the Company during such period; plus (h) costs and fees attendant to the obtaining and maintaining in effect the Applicable Permits paid or payable during such period; plus (i) legal, accounting and other professional fees attendant to any of the foregoing items paid or payable during such period; plus (j) any fees, expenses and indemnification payments of the Secured Parties during such period not included in Debt Service; plus (k) all other cash expenses paid or payable by the Company in the ordinary course of business in connection with the operation of the Project. Operating Costs shall exclude, to the extent included above: (i) payments into any of the Collateral Accounts during such period; (ii) payments of any kind with respect to Restricted Payments during such period, except as permitted under Section 11.12; (iii) depreciation for such period; (iv) payments of any kind with respect to Debt Service or Indebtedness required to be paid from amounts available after application of Section [] of the Depositary Agreement; and (v) any payments of any kind with respect to any restoration of the Project during such period.

“Operating and Major Maintenance Reserve Account” is defined in the Depositary Agreement.

“Operating Reserve Requirement” means \$1,000,000.

“Outside Condition Subsequent Date” is defined in Section 10.14 (*Conditions Subsequent*).

“Pari Passu LC Facility” is defined in Section 11.9 (*Incurrence of Indebtedness*).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Permit” means any and all franchises, licenses, permits, approvals, certifications, authorizations, exemptions and other rights, privileges required to be obtained from a Governmental Authority under any Legal Requirement.

“Permitted Capital Expenditures” means Capital Expenditures consistent with the Construction Budget and Schedule or the then current Annual Operating Budget (a) incurred for the purpose of permitting (i) the Company to comply with applicable Legal Requirements (including any Environmental Laws) and Applicable Permits or (ii) the Project to operate in accordance with the projections and budget set forth in the Financial Model or (b) as required to operate the Project in accordance with Prudent Industry Practices.

“Permitted Holder” means Sponsor or any of its Affiliates or any Qualified Owner.

“Permitted Investments” means: (a) direct obligations of the United States, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States, or of any agency thereof, in either case maturing not more than one year from the date of acquisition thereof; (b) investments in marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case, maturing within one year from the date of acquisition and rated (on the date of acquisition thereof) “A” or better by Fitch or S&P or “A2” or better by Moody’s, respectively; (c) Dollar time deposits with, or certificates of deposit issued by, (i) any bank or trust company licensed under the laws of the United States or any state thereof having outstanding senior long-term unsecured indebtedness and whose long-term debt is rated (on the date of acquisition thereof) “A” or better by Fitch or S&P or “A2” or better by Moody’s, respectively or (ii) a licensed branch of a foreign bank organized under the law of any member country of the Organization for Economic Co-Operation and Development having outstanding senior long-term unsecured indebtedness and whose long-term debt is rated (on the date of acquisition thereof) “A” or better by Fitch or S&P or “A2” or better by Moody’s, respectively, in each case maturing not more than one year from the date of acquisition thereof; (d) commercial paper or tax exempt obligations with a short-term rating “F-1” or better by Fitch or S&P or “P-1” or better by Moody’s, respectively, maturing not more than one year from the date of acquisition thereof; (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (c) of this definition; and (f) money market funds rated at least “AA” or better by Fitch or Standard Poor’s or “Aa2” or better by Moody’s, including any fund for which the Depositary Bank or an affiliate of the Depositary Bank serves as an investment advisor, administrator or shareholder servicing agent, notwithstanding that (i) the Depositary Bank or an affiliate of the Depositary Bank charges and collects fees and expenses from such fund for services rendered *(provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm’s length)* and (ii) the Depositary Bank charges and collects fees and expenses for services rendered pursuant to the Depositary Agreement.

“Permitted Lien” means: (a) Liens on Property of the Company securing all obligations of the Company under (i) the Notes and each other Financing Document and/or (ii) a Pari Passu LC Facility; (b) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted; *provided that* any reserve or other appropriate provision as is required in conformity with GAAP, has been made therefor; (c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, landlord’s or other like Liens imposed by law and arising in the ordinary course of business or in connection with the operation of the Project, in each case for sums not yet due or being

contested in good faith and by appropriate proceedings and with (i) adequate reserves in accordance with GAAP or (ii) for which other appropriate provisions have been made or provided, or (C) are fully covered by insurance; (d) pledges or deposits under worker's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts or leases, or to secure public or statutory obligations, surety bonds, appeal bonds, or customs duties and the like, in each case incurred in the ordinary course of business and not securing Indebtedness; (e) Liens resulting from judgments under any litigation or legal proceeding; *provided* that (i) execution or other enforcement of such Liens is effectively stayed or (ii) the claims secured thereby are being actively contested in good faith and by appropriate proceedings and (A) for which adequate reserves in conformity with applicable generally accepted accounting practices have been established, (B) for which other appropriate provisions have been made or provided, or (C) are fully covered by insurance; (f) Liens, deposits or pledges to secure statutory obligations; (g) other Liens incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance, or credit and that do not in the aggregate materially impair the use of the Company's property or assets or the value of such property or assets for the purpose of such business; (h) [reserved]; (i) servitudes, easements, rights-of-way, restrictions, encroachments, overlapping of improvements, strips, gores, gaps or breaks in contiguity, minor defects or irregularities in title and such other encumbrances or charges against real property or interests therein as of a similar nature which do not in a material way interfere with the value or use thereof or the Company's business; (j) the terms and provisions of any Material Project Documents; and (k) as disclosed in Schedule 6.3 or the Investor Presentation.

"Permitted Tax Distribution" means (i) with respect to any taxable period or portion thereof for which the Borrower or any of its subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal or applicable U.S. state or local or non-U.S. income tax purposes of which a direct or indirect parent of the Borrower is the common parent (each, a **"Consolidated Tax Group"**), or for which the Borrower is a partnership or disregarded entity for U.S. federal or applicable U.S. state or local or non-U.S. income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Borrower or an applicable subsidiary, as may be relevant, to any direct or indirect parent of the Borrower in an amount required to pay any U.S. federal, state or local and/or non-U.S. income taxes (as applicable) of such Consolidated Tax Group or of such direct or indirect parent of the Borrower, as applicable, that are attributable to the taxable income of the Borrower and its subsidiaries for such taxable period; provided that for each such taxable period, the amount of distributions shall not exceed the amount of any U.S. federal, state or local and/or non-U.S. income taxes that the Borrower and/or its subsidiaries would have paid for such taxable period had the Borrower and/or such subsidiaries, as applicable, been a stand-alone corporate taxpayer or stand-alone corporate group, (ii) with respect to any taxable period (or portion thereof) for which the Borrower is a pass-through entity (including a partnership or disregarded entity) for U.S. federal or applicable U.S. state or local or non-U.S. income tax purposes and is not wholly owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Borrower or an applicable subsidiary, as may be relevant, on or prior to each estimated tax payment date as well as each other applicable due date, in amounts which are sufficient to permit the direct and indirect members or partners of the Borrower to pay their income Taxes which arise as a result of their direct or indirect ownership of the Borrower and its subsidiaries, as determined or estimated by the Borrower in good faith, assuming each such member or partner is subject to tax at the highest combined marginal U.S. federal, state and/or local income tax rates applicable to an individual or, if higher, a corporation resident in Los Angeles, California, determined by taking into account (1) any U.S. federal, state and/or local (as applicable) loss carryforwards of such member or partner available from losses of such member or partner attributable to its direct or indirect ownership of the Borrower and its subsidiaries

for prior taxable periods to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes, and to the extent such loss had not already been utilized), and (2) the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income and (3) any adjustment to such member's or partner's taxable income attributable to its direct or indirect ownership of the Borrower and its subsidiaries as a result of any tax examination, audit or adjustment and (ii) not taking into account the application of Section 199A of the Code and (2) the deductibility of state and local income taxes for U.S. federal income tax purposes and (iii) dividends or distributions by the Borrower to any direct or indirect parent of the Borrower in an amount required for any direct or indirect parent to pay franchise, excise and similar taxes and other fees and expenses required to maintain its corporate or other legal existence.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

"Plan" means an "employee benefit plan" (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

"Pledge Agreement" means the Pledge Agreement, dated as of the Closing, between the Pledgor and the Collateral Agent.

"Pledgor" means Calistoga Resiliency Center HoldCo, LLC, a Delaware limited liability company.

"Power Purchase Agreement" means the Distributed Generation Enabled Microgrid Services Agreement, dated as of December 20, 2022, between the Company and the Power Purchaser, as amended, amended and restated, or otherwise modified through the date of this Agreement.

"Power Purchaser" means Pacific Gas and Electric Company, a California Corporation.

"PPA Amendment" means that certain Amendment to the Power Purchase Agreement to be entered into by and between the Power Purchaser and the Company, pursuant to which, among other things, the Guaranteed Initial Delivery Date (as defined in the Power Purchase Agreement) shall be extended to September 1, 2025.

"Preferred Stock" means any class of capital stock of a Person that is preferred over any other class of capital stock (or similar equity interests) of such Person as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such Person.

"Prepayment Date" is defined in Section 9.3(b)(iii) (*Offer to Prepay*).

"Pro Forma Debt Service Coverage Ratio" has the meaning ascribed to such term in the definition of Debt Service Coverage Ratio.

"Project" means the Calistoga Resiliency Center, a hybrid battery energy storage hydrogen fuel cell electrical power generation facility located in Calistoga, California, and capable of delivering

approximately 8.5 MW peak power and 293 MWh over a 48-hour period without refueling while generating.

“Project Costs” is defined in the Depositary Agreement.

“Project Revenues” means all revenues of the Company from the Project, including all interest paid in respect of any funds on deposit in the Collateral Accounts, proceeds from any business interruption and delay in start-up insurance, payments received by the Company under any Material Project Document, all cash payments received by the Company under or in connection with any Hedging Agreement, all proceeds of the sale or other disposition of any part of the Project, all income derived from Permitted Investments and all Tax Credit Transfer Proceeds.

“Property,” “property,” or “Properties,” or “properties” means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

“Property Interests” means all property of the Company to the extent that it is treated as real property under applicable law.

“Prudent Industry Practices” means, with respect to any Person, those practices, methods, equipment, specifications and standards of safety, as the same may change from time to time, as are commonly used by energy storage and electric generation facilities of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical generation facility, with commensurate standards of safety, performance, dependability, efficiency and economy. “Prudent Industry Practices” are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the United States electric power generation industry.

“PTE” is defined in Section 7.2(a) (*Source of Funds*).

“PUHCA” means the Public Utility Holding Company Act of 2005 and FERC’s regulations promulgated thereunder.

“Purchaser” or “Purchasers” means each of the purchasers that has executed and delivered this Agreement to the Company and such Purchaser’s successors and assigns (so long as any such assignment complies with Section 14.2 (*Transfer and Exchange of Notes*)), *provided, however*, that any Purchaser of a Note that ceases to be the registered holder or a beneficial owner (through a nominee) of such Note as the result of a transfer thereof pursuant to Section 14.2 (*Transfer and Exchange of Notes*) shall cease to be included within the meaning of “Purchaser” of such Note for the purposes of this Agreement upon such transfer.

“Purchaser Schedule” means the Purchaser Schedule to this Agreement listing the Purchasers of the Notes and including their notice and payment information.

“QPAM Exemption” is defined in Section 7.2(d) (*Source of Funds*).

“Qualified Institutional Buyer” means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

“Qualified Operator” means any Person that has (or has an Affiliate that has) at least two (2) consecutive years of experience in the day-to-day operation of one or more facilities that consist of, in the aggregate, battery storage assets with capacity of at least 250 megawatts of utility scale solar energy generation or storage assets in the United States.

“Qualified Owner” means any Person that, (a)(i) has current long-term senior unsecured debt rated not less than “BBB” by S&P or Fitch and “Baa2” by Moody’s, or an equivalent issuer rating or (ii) if an unrated entity, has a minimum tangible net worth of at least \$200,000,000; and (b) (i) is a Qualified Operator or has an Affiliate that is a Qualified Operator or (ii) has caused the Company to contract for the operation of the Project by one or more Qualified Operators to the extent that the Project is not, at the time of (and after giving effect to) the direct or indirect acquisition of the interests in any Pledgor, as applicable, by such Person operated by a Qualified Operator.

“Related Fund” means, with respect to any holder of any Note, any fund or entity that (a) invests in Securities or bank loans and (b) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

“Release” means any release, spill, emission, leaking, pumping, depositing, pouring, placing, discarding, abandoning, emptying, migrating, seeping, escaping, leaching, dumping, injection, disposal or discharge into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials.

“Required Holders” means at any time on or after the Closing, the holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

“Required Insurance” is defined in Section 10.2(b) (*Insurance; Loss Proceeds*).

“Responsible Officer” means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

“Restricted Payment Conditions” is defined in Section 11.12.

“Restricted Payments” means (a) any dividend or other distribution by the Company (in cash, Property of the Company, securities, obligations, or other property) on, or other dividends or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Company of, any portion of any membership interest in the Company and (b) all payments (in cash, Property of the Company, securities, obligations, or other property) of principal of, interest on and other amounts with respect to, or other payments on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Company of, any Indebtedness owed to the Pledgor or any Affiliate thereof; *provided* that Restricted Payments shall not include (i) the distribution to the Sponsor in accordance with Section 3.01(b)(iii) of the Depositary Agreement, (ii) Permitted Tax Distributions, (iii) reimbursement of Operating Costs in accordance with the Financing Documents and (iv) reimbursement of Fronted Equity Contributions in accordance with the Financing Documents.

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc.

“**SEC**” means the Securities and Exchange Commission of the United States of America.

“**Secured Party**” means each holder of a Note, the Collateral Agent, and the Depositary Bank.

“**Securities**” or “**Security**” shall have the meaning specified in section 2(1) of the Securities Act.

“**Securities Act**” means the Securities Act of 1933 and the rules and regulations promulgated thereunder from time to time in effect.

“**Security Agreement**” means the Security Agreement, dated as of the Closing, between the Company and the Collateral Agent for the benefit of the Secured Parties.

“**Security Documents**” collectively means, (a) the Depositary Agreement, (b) the Security Agreement, (c) the Pledge Agreement, (d) the Mortgage, (e) each Consent, (f) any other mortgages, deeds of trust, security agreements, mandates, trust arrangements, pledge agreements or control agreements entered into after the Closing and of a similar nature relating to the Company or the financing contemplated by this offering, in each case for the benefit of the Secured Parties and (g) all other security documents hereafter delivered to the Collateral Agent granting a Lien on any property of any Person to secure the obligations of under the Financing Documents.

“**Senior Financial Officer**” means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

“**Site Lease**” means the Site Lease, dated as of July 18, 2023, by and between the City and the Company, as lessee.

“**Solvent**” means, with respect to any Person on any date of determination, that on such date (it being agreed that any such determination on the Closing shall be after giving effect to the Closing):

(a) the fair value of the assets of such Person exceeds their debts and liabilities, subordinated, contingent or otherwise, on a combined basis;

(b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability, on a combined basis, of their debts, subordinated, contingent or otherwise, on a combined basis, as such debts become absolute and matured;

(c) such Person does not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature; and

(d) such Person will not have unreasonably small capital with which to conduct the business in which they are engaged as such businesses are conducted at Closing.

“**Source**” is defined in Section 7.2 (*Source of Funds*).

“**Specified Conditions Subsequent**” is defined in Section 10.14.

“**Sponsor**” means Energy Vault Holdings, Inc., a Delaware corporation.

“State Sanctions List” means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

“Subsidiary” means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

“Substitute Purchaser” is defined in Section 22 (*Substitution of Purchaser*).

“SVO” means the Securities Valuation Office of the NAIC.

“Swap Contract” means (a) any and all interest rate swap transactions, basis swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward foreign exchange transactions, cap transactions, floor transactions, currency options, spot contracts or any other similar transactions or any of the foregoing (including any options to enter into any of the foregoing) and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc. or any International Foreign Exchange Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amounts(s) determined as the mark-to-market values(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts.

“Synthetic Lease” means, at any time, any lease (including leases that may be terminated by the lessee at any time) of any property (a) that is accounted for as an operating lease under GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes, other than any such lease under which such Person is the lessor.

“Tax Credit” means the investment tax credit under Section 48 of the Code.

“Tax Credit Transfer” means a transfer of all or a portion of the Tax Credits with respect to the Project from the Company to a Tax Credit Transferee pursuant to Section 6418 of the Code.

“Tax Credit Transfer Agreement” means, with respect to the Project, an agreement entered into between the Company and a Tax Credit Transferee setting forth the terms of a Tax Credit Transfer, together with all other related agreements effecting such Tax Credit Transfer, in form and substance reasonably satisfactory to the Required Holders (such approval not to be unreasonably withheld, conditioned or delayed).

“Tax Credit Transfer Agreement Funding Date” means any date on which Tax Credit Transferee makes payment amounts to the Company pursuant to the Tax Credit Transfer Agreement.

“Tax Credit Transfer Agreement Signing Date” means the date of execution of the applicable Tax Credit Transfer Agreement.

“Tax Credit Transfer Documents” means, collectively, the Tax Credit Transfer Agreement and the Tax Credit Transferee Credit Support, if any.

“Tax Credit Transfer Outside Date” means [●]².

“Tax Credit Transfer Prepayment Amount” is defined in Section 9.3(a)(iv).

“Tax Credit Transfer Proceeds” means the payments to the Company by the Tax Credit Transferee pursuant to the Tax Credit Transfer Agreement.

“Tax Credit Transferee” means a “transferee taxpayer” (as such term is used in Section 6418 of the Code) which is not related (within the meaning of Code Section 267(b) or 707(b)(1)) to the transferor, who shall be any Person that (a) (i) (x) (1) has long-term unsecured senior debt obligations rated at least “BBB-” by S&P or at least “Baa3” by Moody’s or such equivalent rating by another ratings agency reasonably acceptable to the Required Holders or (2) if an unrated entity, has a minimum tangible net worth of at least \$200,000,000 or (y) otherwise has a creditworthiness reasonably acceptable to the Required Holders or (b) has provided the Tax Credit Transferee Credit Support as of the date of the Tax Credit Transfer Agreement.

“Tax Credit Transferee Credit Support” means, to the extent that the Tax Credit Transferee does not satisfy the condition in clause (a) of the definition of “Tax Credit Transferee”, either (a) a letter of credit for the benefit of the Company as beneficiary an issuer whose long-term unsecured, unsubordinated indebtedness is rated at least “A-” by S&P, “A3” by Moody’s or “A-” by Fitch or such other ratings agency reasonably acceptable to the Required Holders with an initial statement amount that is not less than Tax Credit Transferee’s purchase commitment under the Tax Credit Transfer Agreement or (b) a parent guaranty, for the benefit of the Company, in form and substance reasonably acceptable to the Required Holders (such approval not to be unreasonably withheld, delayed or conditioned) by either (i) an Affiliate of the Tax Credit Transferee that has (A) has long-term unsecured senior debt obligations rated at least “BBB-” by S&P or at least “Baa3” by Moody’s or such equivalent rating by another ratings agency reasonably acceptable to the Required Holders or (B) if an unrated entity, has a minimum tangible net worth of at least \$200,000,000 or (ii) another Person reasonably acceptable to the Required Holders.

“Transaction Documents” means, collectively, the Material Project Documents and the Financing Documents.

² NTD: Company to propose a date.

“Transmission System” means the high voltage electric transmission system owned by Power Purchaser with an interconnection at the substation known as CALISTOGA SUB.

“United States Person” has the meaning set forth in Section 7701(a)(30) of the Code.

“U.S. Economic Sanctions Laws” means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

“USA PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

“Voluntary Equity Contributions” means any equity contribution made to the Company by or on behalf of the Pledgor or any Affiliate of the Pledgor.

SCHEDULE 1

SITE

Lying within the City of Calistoga, County of Napa, State of California and being a portion of the parcel of land described in the deed to the City of Calistoga recorded February 4, 1916 in Book 232 of Deeds at page 200, a portion of the parcels of land described in the deed to the City of Calistoga recorded May 11, 1943 in Book 194 of Official Records at Page 86, and a portion of the parcel of land described as Parcel No. 1 in the deed to the City of Calistoga recorded September 24, 1986 in Book 1468 of Official Records at Page 214, all in the Office of the County Recorder of Napa County, said portion of land being more particularly described as follows:

COMMENCING at a found 3" brass disk well monument at the centerline of Washington Street in the City of Calistoga; thence south 71°18'40" East 626.60 feet to another 3" brass disc well monument as shown on the Record of Survey Map Filed in Bool 48 at Page 81 Napa County Records (Basis of Bearings for this legal description); thence South 72°22'46" East 852.3 feet to the POINT OF BEGINNING; thence Noth 24°38'38" East 106.69 feet; thence South 63°57'04" East 370 feet; thence South 12°47'47" West 26.60 feet; thence South 78°56'57" West 68.74 feet; thence North 71°01'03" West 371.09 feet to the POINT OF BEGINNING

Containing 0.70 acres, more or less.

SCHEDULE 1
(to Note Agreement)

SCHEDULE 6.3
DISCLOSURE MATERIALS

The following documents are located in the SharePoint site labeled: **Calistoga Resiliency Center - Dataroom2** in folder: [8. Disclosure Materials \(NPA\)](#)

1. The Investor Presentation
2. Insurance Certificates
3. Financial Statements
4. Financial Model

SCHEDULE 6.3
(to Note Agreement)

SCHEDULE 6.5
FINANCIAL STATEMENTS

The Financial Statements can be found in Schedule 6.3.

SCHEDULE 6.5
(to Note Agreement)

SCHEDULE 6.14

EXISTING INDEBTEDNESS OF THE COMPANY

OBLIGOR(S)	CREDITOR	CUSIP OR ISIN (IF APPLICABLE)	DESCRIPTION OF INDEBTEDNESS	INTEREST RATE(S)	COLLATERAL	FINAL	OUTSTANDING
						MATURITY	PRINCIPAL AMOUNT

SCHEDULE 6.14
(to Note Agreement)

SCHEDULE 6.19

APPLICABLE PERMITS

The following documents are located in the SharePoint site labeled: **Calistoga Resiliency Center - Dataroom2** in folder: [NPA Permit Library](#)

FILENAME	Description
1018-PGE Easement Deed	Executed easement for the MV line extension from pole to the site
240223 Phase II Activities_Encroachment App_CRC	General encroachment permit for Phase 2 drainage and grading around City property
240223 Phase II Activities_Grading App_CRC-signed	Basic grading permit for dirt work and excavation around the site
CRC Building Permit_Phase 2 Control House	Specific building permit for the site control house structure
CRC Building Permit_Phase 1 CSE	General building permit for the Phase 1 site work, utility movements and excavation
CRC Encroachment Permit_Phase 2 5002	General encroachment permit for the Phase 2 work around City property
CRC Encroachment Permit_Phase 1 4870	General encroachment permit for the Phase 1 work around City property
CRC Fire Permit 1990	Site Fire permit for the design, panel, sensors etc
CRC Grading Permit Phase 2	Specific building permit related to Phase 2 grading work at the site
PC RESO 2023-7 Approving UP 2022-11	City Design Committee approval for the project Use Permit
PC RESO 2023-9 Approving DP 2022-4	City Design Committee approval for the Design Review for the project
SPCC Tier1 Calistoga Resiliency Center 2024.07	Spill Prevention Control and Countermeasure approved plan for the operating site

SCHEDULE 6.19
(to Note Agreement)

SCHEDULE 10.2

REQUIRED INSURANCE

- A. Capitalized terms used in this Schedule 10.2 shall have the meanings given to such terms in the Agreement to which this Schedule 10.2 is attached and made part of (unless specifically defined in this Schedule 10.2).
- B. Company shall procure and/or maintain, or cause to be maintained, for the full term and thereafter as required herein, at their sole cost and expense, the following insurance coverage:
1. Builders risk insurance - until such time as the materials or work are accepted and put to their intended use or Commercial Operation Date (COD), and appropriate lien waivers are received and accepted by Company, written on an "all risk" builders risk form, on a completed value basis including change orders with the following minimum coverage: (i) replacement cost valuation; (ii) debris removal; (iii) earthquake, flood and wind coverage; (iv) permission for partial occupancy; (v) temporary off-site storage; (vi) transit; (vii) testing and startup; (viii) waiver of subrogation in favor of all named insureds, project manager, Collateral Agent and Secured Parties; (ix) name the Collateral Agent for the benefit of the Secured Parties as assignee on a lender's loss payable clause, or equivalent endorsement; and (x) a reasonable deductible based on market availability. Company will include general contractor, subcontractors, of all tiers, as named insureds with Company as the first named insured. Company will adjust all claims on behalf of all named insureds subject to lenders' loss payable clause or equivalent endorsement and in accordance with the Note Purchase Agreement.
 2. Property insurance shall insure the real and personal property (building, improvements and betterments, contents) under a form with coverage not less than that found on ISO "Causes of Loss - Special Form" and ISO "Building and Personal Property Form" or their equivalent forms (e.g., an "All Risk" manuscript policy) upon COD. The coverage shall include, but not be limited to: (i) 100% of the estimated replacement cost of the real and personal property; (ii) agreed amount endorsement and or a coinsurance waiver endorsement; (iii) building ordinance coverage (ordinance or law); (iv) equipment breakdown coverage; v) name the Collateral Agent for the benefit of the Secured Parties as assignee on a lender's loss payable clause or equivalent endorsement; and (v) loss of business income and extra expense coverage for a period not less than 12 months with an extended period of indemnity of 12 months. In addition to the ISO forms (or their equivalent), the property policy shall cover; (a) acts of terrorism (at a minimum TRIA coverage); and (b) the following additional perils with separate limits of no less than \$10,000,000 per occurrence for each of the following perils: windstorm, earthquake and flood. If the location is in a high hazard flood zone as determined by Federal Emergency Management Agency, then Company shall purchase and maintain coverage through the National Flood Insurance Plan to the maximum available limit for commercial concerns and \$5,000,000 of excess flood insurance including business income coverage.
 3. Commercial general liability insurance shall cover all operations and work of Company for bodily injury and property damage, advertising and personal injury liability with limits of not less than:
 - a. \$1,000,000 each occurrence.

SCHEDULE 10.2
(to Note Agreement)

- b. \$1,000,000 personal and advertising injury.
- c. \$2,000,000 general aggregate (other than products – completed operations).
- d. \$2,000,000 products – completed operations aggregate.

Coverage shall be written on an “occurrence” basis using an ISO CG 00 01 form (“claims made” is not acceptable), with the following minimum coverage:

- a. Separation of insureds.
- b. Contractual liability (as provided by ISO CG 00 01 form); with no additional restrictions, modifications, endorsements, or amendments.
- c. Additional insured coverage for Collateral Agent, Secured Parties and Customers as required by contract using an ISO CG 20 26 07/04 edition or equivalent form.
- d. Additional insured status must be on a primary and noncontributory basis.
- e. Waiver of subrogation in favor of Collateral Agent, Secured Parties and Customers as required by contract using an ISO CG 24 04 12/19 edition or equivalent form.
- f. No “height restriction”, “explosion, collapse or underground (XCU)” limitations or similar restrictions, endorsements, or exclusions.

Company shall maintain commercial general liability insurance for not less than ten (10) years, the statute of repose or statute of limitations, whichever is shorter, after the completion of the Project; including products - completed operations coverage and additional insured status as detailed above.

- 4. Commercial automobile liability insurance shall cover all owned, leased, non-owned and hired vehicles or any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws for bodily injury and property damage with limits of not less than \$1,000,000 per accident and shall be written on an ISO CA 00 01 or equivalent form and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
- 5. Workers’ compensation and employers’ liability insurance in accordance with the applicable state statutes and laws exercising jurisdiction over employees. Employers’ liability limits not less than:
 - a. \$1,000,000 bodily injury by accident, for each accident.
 - b. \$1,000,000 bodily injury by disease, policy limit.
 - c. \$1,000,000 bodily injury by disease, each employee.

To the fullest extent allowed by law, include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.

SCHEDULE 10.2
(to Note Agreement)

6. Umbrella liability insurance shall cover all operations and work of Company and shall be follow form of the employers' liability, commercial general liability and commercial automobile liability insurance policies as detailed in this Schedule 10.2, with limits of not less than:
 - a. \$25,000,000 each occurrence.
 - b. \$25,000,000 general aggregate.
 - c. \$25,000,000 products – completed operations aggregate.

Coverage shall be written on an "occurrence" basis form. Follow form of all underlying insurance policies for additional insured, primary and noncontributory basis and waiver of subrogation. Company shall maintain umbrella or excess liability insurance for not less than the ten (10) years, statute of repose or statute of limitations, whichever is shorter, after the completion of the project; including products - completed operations coverage and additional insured status as detailed above.

7. Contractors Pollution Liability (during construction/maintenance) and Pollution legal liability insurance which shall cover all operations, services and/or work with limits not less than \$5,000,000 per loss, schedule CRC location and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
 8. Cyber and privacy insurance shall cover all operations and work of Company with limits of not less than \$10,000,000 each claim and include Collateral Agent and Secured Parties as additional insureds on a primary and non-contributory basis and include a waiver of subrogation in favor of the Collateral Agent and Secured Parties.
 9. Directors & Officers liability insurance for any actual or alleged act, error, statement, omission, or breach of duty by a director or officer in their capacity as such, or any matter claimed against them solely by reason of their status as a director or officer of the Company with limits of not less than \$5,000,000 each claim.
 10. Crime (fidelity) insurance covering all employees, temporary workers or independent contracts of Company with limits not less than \$1,000,000 each occurrence, including third party / client coverage where required by contract.
 11. And such other or additional insurance as may be customary, required by law, or as the Collateral Agent and Secured Parties, Customer or Company deems necessary to maintain.
- C. All reference to "ISO" means unamended or unaltered versions of the Insurance Services Office insurance policy forms and endorsements.
 - D. All required insurance shall use Insurers with a minimum A.M. Best rating of A- VIII and all insurers shall be licensed or authorized to do business in the state of California.
 - E. All required insurance shall be endorsed to provide Collateral Agent and Customers as required by contract to receive thirty (30) days prior written notice of cancellation or nonrenewal except ten (10) days for nonpayment of premium.

SCHEDULE 10.2
(to Note Agreement)

- F. Company shall furnish Collateral Agent and Customers as required by contract with ACORD certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Any waiver of the Company's obligation to furnish such ACORD certificate(s) or maintain such insurance must be in writing and signed by an authorized representative of Collateral Agent. Failure of Collateral Agent to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of Collateral Agent to identify a deficiency from evidence that is provided shall not be construed as a waiver of Company's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.
- G. Company shall cooperate with Collateral Agent on behalf of the Secured Parties. Company shall notify Collateral Agent in writing as soon as practicable after they receive notice of any loss, damage, or injury or are aware of an incident which might give rise to a claim in the future when the amount of the claim or estimated amount of the claim is in excess of \$100,000. Company shall work with Collateral Agent on behalf of the Secured Parties to adjust claims per the Note Purchase Agreement and take no action which might operate to bar Collateral Agent or Secured Parties from obtaining protection afforded by Company's insurance policies or which might prejudice Collateral Agent or Secured Parties in its defense to a claim based on such loss, damage, or injury.
- H. Upon the request of Collateral Agent, a complete copy of the required insurance policies and/or any other documents or information necessary to verify the insurance coverage required herein are in force and all premia have been paid, are to be submitted to Collateral Agent as soon as practical.
- I. The insurance coverage set forth in this Insurance Schedule, will in no way limit Company liability arising out of any operations, services and/or work (including liability under indemnification provisions) or under any other agreements or by-law. Company will be responsible for determining appropriate inclusions, coverage and limits which may be in excess of the minimum insurance requirements set forth herein.
- J. This Insurance Schedule is an independent contract provision and shall survive the termination or expiration of the agreement.

SCHEDULE 10.2
(to Note Agreement)

SCHEDULE 10.14

CONSENTS AND NOTICES

1. Consent to collateral assignment of the Power Purchase Agreement;
2. Consent to collateral assignment of the EPC Contract;
3. Consent to collateral assignment of the O&M Agreement;
4. Consent of the City to the Financing Documents in accordance with Section 22(c) of the Site Lease; and
5. Notice to the City of the Mortgage.

SCHEDULE 10.14
(to Note Agreement)

PURCHASER SCHEDULE

CALISTOGA RESILIENCY CENTER, LLC
4360 Park Terrace Drive, Suite 100
Westlake Village, CA 91361

Information Relating to Purchasers

	NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED
	[NAME OF PURCHASER]	\$
(1)	All payments by wire transfer of immediately available funds to: with sufficient information to identify the source and application of such funds.	
(2)	All notices of payments and written confirmations of such wire transfers:	
(3)	E-mail address for Electronic Delivery:	
(4)	All other communications:	
(5)	U.S. Tax Identification Number:	

PURCHASER SCHEDULE
(to Note Agreement)

EXHIBIT A

[FORM OF NOTE]

CALISTOGA RESILIENCY CENTER, LLC

[]% SENIOR SECURED NOTE DUE [APRIL], 2032

No. []
\$[]

[Date]
PPN[]

FOR VALUE RECEIVED, the undersigned, **CALISTOGA RESILIENCY CENTER, LLC** (herein called the “**Company**”), a limited liability company organized and existing under the laws of the State of Delaware, hereby promises to pay to [], or its registered assigns, the principal sum of [] DOLLARS (or so much thereof as shall not have been prepaid) on April 4, 2032 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of (x) 12.50% per annum (the “**Initial Interest Rate**”) from the date hereof until the earlier to occur of (i) the Company’s receipt of any Tax Credit Transfer Proceeds and (ii) December 31, 2025 and (y) thereafter, 9.50% per annum (the “**Subsequent Interest Rate**”), in each case payable semiannually, on the 28th day of February (or the 29th day of February in a leap year) and the 31st day of August in each year, commencing with the February 28 (or February 29 in a leap year) or August 31 next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable and (b) to the extent permitted by law, (x) on any overdue payment of interest and (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the greater of (i)(I) 14.50% while the Initial Interest Rate is in effect or (II) 11.50% while the Subsequent Interest Rate is in effect or (ii) 2.00% over the rate of interest publicly announced by Citibank, N.A. from time to time in New York City, NY as its “base” or “prime” rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America in New York City, New York at the principal office of Wilmington Trust, National Association in such jurisdiction or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of senior secured notes (herein called the “**Notes**”) issued pursuant to the Note Purchase Agreement, dated April 4, 2025 (as from time to time amended, the “**Note Purchase Agreement**”), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 2.1 of the Note Purchase Agreement and (ii) made the representation set forth in Section 7.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new

Exhibit A-
(to Note Agreement)

Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

The Company will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

CALISTOGA RESILIENCY CENTER, LLC

By _____
Name:
Title:

Exhibit A-
(to Note Agreement)

EXHIBIT B

FORM OF CONSENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [] [], 2025 between [●], [●] (“Contracting Party”), and Wilmington Trust, National Association as collateral agent (in such capacity, “Collateral Agent”), for the benefit of various lenders and issuing banks (collectively, the “Secured Parties”) providing financing to Calistoga Resiliency Center, LLC, a Delaware limited liability Company (“Company”). Contracting Party, Company, and the Collateral Agent shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain [] dated as of [●] (as amended, modified, supplemented or amended and restated from time to time, and including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between Contracting Party and Company.

B. The Secured Parties have provided, or have agreed to provide, to Company financing pursuant to one or more agreements (the “Financing Documents”), and require that Collateral Agent be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, Contracting Party has agreed to enter into this Consent and Agreement for the benefit of Company.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, Contracting Party consents to and approves the pledge and assignment by Company to Collateral Agent pursuant to the Financing Documents of (a) the Assigned Agreement and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. Limitations on Assignment.

3.1 Limitations. Collateral Agent acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Company, Collateral Agent shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Collateral Agent or any third-party designated by Collateral Agent, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement is a Permitted Transferee. Collateral Agent further acknowledges that this assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Collateral Agent has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce

Exhibit B-1
(to Note Agreement)

the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Company and Collateral Agent (a “Financing Default”), in which case Collateral Agent shall be entitled to designate a Permitted Transferee, after completing the process of obtaining Contracting Party’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Company then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 “Permitted Transferee”.

(a) A Permitted Transferee is a person or entity that: (i) cures any and all defaults of Company under the Assigned Agreement which are “Capable of Being Cured” as defined in Section 3.2(b); (ii) executes and delivers to Contracting Party a written assumption of all of Company’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to Contracting Party; (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement; (iv) if requested by Contracting Party, provides (A) tax and enforceability assurance as Contracting Party may reasonably request, to ensure that Contracting Party does not incur any costs or lose any benefits by such assignment; (B) documentation to demonstrate the Permitted Transferee’s safety record and ability to meet applicable safety obligations; and (C) its ability to construct (if applicable), operate, and maintain the Project, and evidence that the Permitted Transferee has operated other energy facilities with a similar technology and operating profile; and (v) is reasonably acceptable to Contracting Party.

(b) “Capable of Being Cured” means that the Assigned Agreement specifies that a cure is available to Company for a default(s), whether such cure is financial or by performance, and the terms of the cure as specified in the Assigned Agreement remain unfulfilled and available as set forth in the Assigned Agreement without modification. If the Assigned Agreement does not specify that a cure is available for a default(s), or a cure is specified but is no longer available as a cure (due to the passage of time or for any other reason), then the default(s) shall not be “Capable of Being Cured”. An incurable default by Company shall be cause for termination by Contracting Party of the Assigned Agreement and the Assigned Agreement will not be available for assignment to a Permitted Transferee.

(c) Collateral Agent shall, following the occurrence of a Financing Default, Notify Contracting Party of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Collateral Agent, in connection with the enforcement of Collateral Agent’s rights under the Financing Documents, and Contracting Party shall, within thirty (30) Business Days of its receipt of such Notice, confirm to Collateral Agent whether or not such proposed transferee is a Permitted Transferee (together with a written statement of the reason(s) for any negative determination), it being understood that if Contracting Party shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a Permitted Transferee.

4. Cure Rights.

4.1 Notice to Collateral Agent. Concurrently with the delivery to Company of any Notice of an event of default under the Assigned Agreement (each, an “Event of Default”) (and, a “Default Notice”), Contracting Party shall provide a copy of such Default Notice to Collateral Agent pursuant

to Section 8.1 of this Consent and Agreement. In addition, Company shall provide a copy of the Default Notice to Collateral Agent promptly after receipt from Contracting Party (and in any event within five (5) Business Days), independent of any agreement of Contracting Party to deliver such Default Notice.

4.2 Cure Period Available to Collateral Agent. Upon the occurrence of an Event of Default, but only if the default is curable, Contracting Party agrees not to terminate the Assigned Agreement unless it or Company first provides Collateral Agent with Notice of the Event of Default and Contracting Party affords Collateral Agent an additional cure period of ten (10) calendar days for a financial cure or thirty (30) calendar days for a non-financial cure.

4.3 Failure to Deliver Default Notice. If neither Contracting Party nor Company delivers a Default Notice to Collateral Agent as provided in Section 4.1, then the Collateral Agent's applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Collateral Agent by either Contracting Party or Company, whichever is received first. Except for a delay in the commencement of the cure period for Collateral Agent and a delay in Contracting Party's ability to terminate the Assigned Agreement (in each case only if both Contracting Party and Company fail to deliver Notice of an Event of Default to Collateral Agent), failure of Contracting Party to deliver any Default Notice shall not waive Contracting Party's right to take any action under the Assigned Agreement and will not subject Contracting Party to any damages or liability for failure to provide such Notice.

4.4 Extension for Foreclosure Proceedings. If (a) it is necessary for the Collateral Agent to have possession of the Project (as defined in the Assigned Agreement) in order for Collateral Agent to cure an Event of Default which is Capable of Being Cured, as defined in Section 3.2(b) and (b) Collateral Agent commences foreclosure proceedings against Company within thirty (30) calendar days of receiving Notice of an Event of Default from Contracting Party or Company, whichever is received first, then Collateral Agent shall be allowed an additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; *provided, however*, that Collateral Agent shall provide a Notice to Contracting Party that it intends to commence foreclosure proceedings with respect to Company within ten (10) calendar days of receiving a Notice of such Event of Default from Contracting Party or Company, whichever is received first. In the event Collateral Agent or its designated Permitted Transferee succeeds to Company's interest in the Project as a result of foreclosure proceedings, the Collateral Agent or Permitted Transferee shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Company and Collateral Agent agrees that Contracting Party shall have the right to set off or deduct from payments due to Company each and every amount due Contracting Party from Company whether or not arising out of or in connection with the Assigned Agreement on the terms and conditions set forth in the Assignment Agreement or other arrangement between Contracting Party and Company. Collateral Agent further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action Contracting Party may have against Company.

6. No Representation or Warranty. Company and Collateral Agent each recognizes and acknowledges that Contracting Party makes no representation or warranty, express or implied, that Company has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Collateral Agent is responsible for satisfying itself as to the existence and extent of Company's right,

title, and interest in the Assigned Agreement, and Collateral Agent releases Contracting Party from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Collateral Agent acknowledges and agrees that Contracting Party may agree with Company to modify or amend the Assigned Agreement, and that Contracting Party is not obligated to notify Collateral Agent of any such amendment or modification to the Assigned Agreement. Collateral Agent hereby releases Contracting Party from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Miscellaneous.

8.1 Notices. All Notices given or requirements of a Party to notify hereunder shall be in writing, receipt of which shall be deemed complete (i) at the close of business of the date of receipt, if delivered by hand or by electronic means or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, *provided* such Notice was properly addressed to the appropriate address set forth below or to such other address that a Party may designate by prior Notice to the other Parties.

To Collateral Agent:

Wilmington Trust, National Association

Attn: _____
Department _____
Street Address: _____
Telephone: _____
Email: _____
with a copy to: _____

[•]

To Contracting Party:

[•]

Attn: _____
Department _____
Street Address: _____
Telephone: _____
Email: _____

8.2 No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Contracting Party, and shall be binding on and inure to the benefit of the Collateral Agent, the Secured Parties and their respective successors and Permitted Transferees and assigns under the Financing Documents.

Exhibit B-4
(to Note Agreement)

8.3 No Modification. This Consent and Agreement is neither a modification of, nor an amendment to, the Assigned Agreement.

8.4 Choice of Law. The Parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of New York, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

8.5 No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party claimed to have so waived or excused.

8.6 Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the Parties, shall constitute a single binding agreement.

8.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Consent and Agreement.

8.8 Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

8.9 Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all Parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, each of Contracting Party and Collateral Agent has duly executed this Consent and Agreement as of the date first written above.

[•]

By:

Name:

Title:

SIGNATURE PAGE TO CONSENT AND AGREEMENT

Exhibit B-6
(to Note Agreement)

EXHIBIT C

CONSTRUCTION BUDGET AND SCHEDULE

Please refer to the link in Annex 1 'The Financial Model'. The first year's operating budget and schedule can be found there, linked here as well: [2.1 Financial Model \(levered\).xlsm](#)

Additionally, please refer to the Independent Engineering report which can be found on SharePoint site: [Independent Engineer Report](#)

Exhibit C
(to Note Agreement)

EXHIBIT D
FORM OF MORTGAGE

Exhibit D-1
(to Note Agreement)

ANNEX 1 – FINANCIAL MODEL

Annex 1
(to Note Agreement)

ANNEX II – AMORTIZATION SCHEDULE

Annex II
(to Note Agreement)

Energy Vault Holdings, Inc.
Insider Trading Compliance Policy and Procedures

Federal and state laws prohibit trading in the securities of a company while in possession of material nonpublic information and in breach of a duty of trust or confidence. These laws also prohibit anyone who is aware of material nonpublic information from providing this information to others who may trade. Violating such laws can undermine investor trust, harm the reputation and integrity of Energy Vault Holdings, Inc. (together with its subsidiaries, the “Company”), and result in dismissal from the Company or even serious criminal and civil charges against the individual and the Company. The Company reserves the right to take whatever disciplinary or other measure(s) it determines in its sole discretion to be appropriate in any particular situation, including disclosure of wrongdoing to governmental authorities.

Persons Covered and Administration of Policy

This Insider Trading Compliance Policy and Procedures (this “Policy”) applies to all officers, directors and employees of the Company. For purposes of this Policy, “officers” refer to those individuals who meet the definition of “officer” under Section 16 of the Securities Exchange Act of 1934 (as amended, the “Exchange Act”). Individuals subject to this Policy are responsible for ensuring that members of their household comply with this Policy. This Policy also applies to any entities controlled by individuals subject to the Policy, including any corporations, limited liability companies, partnerships or trusts, and transactions by these entities should be treated for the purposes of this Policy as if they were for the individual’s own account. The Company may determine that this Policy applies to additional persons with access to material nonpublic information, such as temporary workers, contractors or consultants. Officers, directors and employees, together with any other person designated as being subject to this Policy by the Chief Legal Officer or his or her designee (the “Compliance Officer”), are referred to collectively as “Covered Persons.”

Questions regarding the Policy should be directed to the Compliance Officer, who is responsible for the administration of this Policy.

Policy Statement

No Covered Person shall purchase or sell any type of security while in possession of material nonpublic information relating to the security or the issuer of such security in breach of a duty of trust or confidence, whether the issuer of such security is the Company or any other company. In addition, if a Covered Person is in possession of material nonpublic information about other publicly-traded companies, such as suppliers, customers, competitors or potential acquisition targets, the Covered Person may not trade in such other companies’ securities until the information becomes public or is no longer material. Further, no Covered Person shall purchase or sell any security of any other company, including another company in

the Company's industry, while in possession of material nonpublic information if such information is obtained in the course of the Covered Person's employment or service with the Company.

In addition, Covered Persons shall not directly or indirectly communicate material nonpublic information to anyone outside the Company (except in accordance with the Company's policies regarding confidential information) or to anyone within the Company other than on a "need-to-know" basis.

"Securities" includes stocks, bonds, notes, debentures, options, warrants, equity and other convertible securities, as well as derivative instruments.

"Purchase" and "sale" are defined broadly under the federal securities law. "Purchase" includes not only the actual purchase of a security, but also any contract to purchase or otherwise acquire a security. "Sale" includes not only the actual sale of a security, but also any contract to sell or otherwise dispose of a security. These definitions extend to a broad range of transactions, including conventional cash-for-stock transactions, conversions, the exercise of stock options, transfers, gifts, and acquisitions and exercises of warrants or puts, calls, pledging and margin loans, or other derivative securities.

The laws and regulations concerning insider trading are complex, and Covered Persons are encouraged to seek guidance from the Compliance Officer prior to considering a transaction in Company securities.

Blackout Periods

No director, officer or employee listed on Schedule I, as amended from time to time, (as well as any individual or entity covered by this Policy by virtue of their relationship to such director, officer or employee) shall purchase or sell any security of the Company during the period beginning on the 15th calendar day of the last month of any fiscal quarter of the Company (provided, that for the first quarter only, the blackout period shall begin on the 31st day of March) and ending after completion of the second full trading day after the public release of earnings data for such fiscal quarter or during any other trading suspension period declared by the Company, such period, a "blackout period." A "trading day" is a day on which U.S. national stock exchanges are open for trading. If, for example, the Company were to make an announcement on Monday *prior* to 9:30 a.m. Eastern Time, then the blackout period would terminate *after* the close of trading on Tuesday. If an announcement were made on Monday after 9:30 a.m. Eastern Time, then the blackout period would terminate after the close of trading on Wednesday. If you have any question as to whether information is publicly available, please direct an inquiry to the Compliance Officer.

These prohibitions do not apply to:

- purchases of the Company's securities from the Company, or sales of the Company's securities to the Company;
- exercises of stock options or other equity awards or the surrender of shares to the Company in payment of the exercise price or in satisfaction of any tax withholding obligations in a manner permitted by the applicable equity award agreement, or vesting of equity-based awards, in each case, that do not involve a market sale of the Company's securities (the "cashless exercise" of a Company stock option or other equity award through a broker does involve a market sale of the Company's securities, and therefore would not qualify under this exception);
- *bona fide* gifts of the Company's securities, unless the individual making the gift knows, or is reckless in not knowing, the recipient intends to sell the securities while the donor is in possession of material nonpublic information about the Company; or
- purchases or sales of the Company's securities made pursuant to a plan adopted to comply with the Exchange Act Rule 10b5-1 ("Rule 10b5-1").

Exceptions to the blackout period policy may be approved by the Compliance Officer or, in the case of exceptions for directors, the Board of Directors.

The Compliance Officer may recommend that directors, officers, employees or others suspend trading in Company securities because of developments that have not yet been disclosed to the public. Subject to the exceptions noted above, all of those individuals affected should not trade in the Company's securities while the suspension is in effect, and should not disclose to others that the Company has suspended trading.

Preclearance of Trades by Directors, Officers and Employees

All transactions in the Company's securities by directors, officers, and employees listed on Schedule II (each, a "Preclearance Person") must be precleared by the Compliance Officer or the Chief Financial Officer for transactions by the Compliance Officer. Preclearance should not be understood to represent legal advice by the company that a proposed transaction complies with the law.

A request for preclearance must be in writing, should be made at least two business days in advance of the proposed transaction, and should include the identity of the Preclearance Person, a description of the proposed transaction, the proposed date of the transaction, and the number of shares or other securities involved. In addition, the Preclearance Person must execute a certification that he or she is not aware of material nonpublic information about the Company. The Compliance Officer, or the Chief Financial Officer for transactions by the Compliance Officer, shall have sole discretion to decide whether to clear any contemplated transaction. All trades that are precleared must be effected within five business days of receipt of the preclearance. A precleared trade (or any portion of a

precleared trade) that has not been effected during the five business day period must be submitted for preclearance determination again prior to execution. Notwithstanding receipt of preclearance, if the Preclearance Person becomes aware of material nonpublic information, or becomes subject to a blackout period before the transaction is effected, the transaction may not be completed. Transactions under a previously established Rule 10b5-1 Trading Plan that has been preapproved in accordance with this Policy are not subject to further preclearance.

None of the Company, the Compliance Officer, or the Company's other employees will have any liability for any delay in reviewing, or refusal of, a request for preclearance.

Material Nonpublic Information

Information is considered "material" if there is a substantial likelihood that a reasonable investor would consider it important in making a decision to buy, sell, or hold a security, or if the information is likely to have a significant effect on the market price of the security. Material information can be positive or negative, and can relate to virtually any aspect of a company's business or to any type of security, debt, or equity. Also, information that something is likely to happen in the future—or even just that it may happen—could be deemed material.

Examples of material information may include (but are not limited to) information about:

- corporate earnings or earnings forecasts;
- possible mergers, acquisitions, tender offers, or dispositions;
- major new products or product developments;
- important business developments, such as developments regarding strategic collaborations;
- management or control changes;
- significant financing developments including pending public sales or offerings of debt or equity securities;
- defaults on borrowings;
- bankruptcies;
- cybersecurity or data security incidents; and
- significant litigation or regulatory actions.

Information is "nonpublic" if it is not available to the general public. In order for information to be considered "public" it must be widely disseminated in a manner that makes it generally available to investors in a Regulation FD-compliant method, such as through a press release, a filing with the U.S. Securities and Exchange Commission (the "SEC") or a Regulation

FD-compliant conference call. The Compliance Officer shall have sole discretion to decide whether information is public for purposes of this Policy.

The circulation of rumors, even if accurate and reported in the media, does not constitute public dissemination. In addition, even after a public announcement, a reasonable period of time may need to lapse in order for the market to react to the information. Generally, the passage of two full trading days following release of the information to the public, is a reasonable waiting period before such information is deemed to be public.

Post-Termination Transactions

If an individual is in possession of material nonpublic information when the individual's service terminates, the individual may not trade in the Company's securities until that information has become public or is no longer material.

Prohibited Transactions

The Company has determined that there is a heightened legal risk and the appearance of improper or inappropriate conduct if persons subject to this Policy engage in certain types of transactions. Therefore, Covered Persons shall comply with the following policies with respect to certain transactions in the Company's securities.

Short Sales

Short sales of the Company's securities are prohibited by this Policy. Short sales of the Company's securities, or sales of shares that the insider does not own at the time of sale, or sales of shares against which the insider does not deliver the shares within 20 days after the sale, evidence an expectation on the part of the seller that the securities will decline in value, and, therefore, signal to the market that the seller has no confidence in the Company or its short-term prospects. In addition, Section 16(c) of the Exchange Act prohibits Section 16 reporting persons (i.e., directors, officers, and the Company's 10% stockholders) from making short sales of the Company's equity securities.

Options

Transactions in puts, calls, or other derivative securities involving the Company's equity securities, on an exchange, on an over-the-counter market, or in any other organized market, are prohibited by this Policy. A transaction in options is, in effect, a bet on the short-term movement of the Company's stock and, therefore, creates the appearance that a Covered Person is trading based on material nonpublic information. Transactions in options, whether traded on an exchange, on an over-the-counter market, or any other organized market, also may focus a Covered Person's attention on short-term performance at the expense of the Company's long-term objectives.

Hedging Transactions

Hedging transactions involving the Company's securities, such as prepaid variable forward contracts, equity swaps, collars and exchange funds, or other transactions that hedge or offset, or are designed to hedge or offset, any decrease in the market value of the Company's equity securities, are prohibited by this Policy. Such transactions allow the Covered Person to continue to own the covered securities, but without the full risks and rewards of ownership. When that occurs, the Covered Person may no longer have the same objectives as the Company's other stockholders.

Margin Accounts and Pledging

Individuals are prohibited from pledging Company securities as collateral for a loan, purchasing Company securities on margin (i.e., borrowing money to purchase the securities), or placing Company securities in a margin account. This prohibition does not apply to cashless exercises of stock options under the Company's equity plans, nor to situations approved in advance by the Compliance Officer.

Partnership Distributions

Nothing in this Policy is intended to limit the ability of an investment fund, venture capital partnership or other similar entity with which a director is affiliated to distribute Company securities to its partners, members, or other similar persons. It is the responsibility of each affected director and the affiliated entity, in consultation with their own counsel (as appropriate), to determine the timing of any distributions, based on all relevant facts and circumstances, and applicable securities laws.

Rule 10b5-1 Trading Plans

The trading restrictions set forth in this Policy, other than those transactions described under "Prohibited Transactions," do not apply to transactions under a previously established contract, plan or instruction to trade in the Company's securities entered into in accordance with Rule 10b5-1 (a "Trading Plan") that:

- has been submitted to and preapproved by the Compliance Officer;
- includes a "Cooling Off Period" for
 - Section 16 reporting persons that extends to the later of 90 days after adoption or modification of a Trading Plan or two business days after filing the Form 10-K or Form 10-Q covering the fiscal quarter in which the Trading Plan was adopted, up to a maximum of 120 days; and

- employees and any other persons not otherwise section 16 reporting persons, other than the Company, that extends 30 days after adoption or modification of a Trading Plan;
- for Section 16 reporting persons, includes a representation in the Trading Plan that the Section 16 reporting person is (1) not aware of any material nonpublic information about the Company or its securities; and (2) adopting the Trading Plan in good faith and not as part of a plan or scheme to evade Rule 10b-5;
- has been entered into in good faith at a time when the individual was not in possession of material nonpublic information about the Company and not otherwise in a blackout period, and the person who entered into the Trading Plan has acted in good faith with respect to the Trading Plan;
- either (1) specifies the amounts, prices, and dates of all transactions under the Trading Plan; or (2) provides a written formula, algorithm, or computer program for determining the amount, price, and date of the transactions, and (3) prohibits the individual from exercising any subsequent influence over the transactions; and
- complies with all other applicable requirements of Rule 10b5-1.

The Compliance Officer may impose such other conditions on the implementation and operation of the Trading Plan as the Compliance Officer deems necessary or advisable. Individuals may not adopt more than one Trading Plan at a time except under the limited circumstances permitted by Rule 10b5-1 and subject to preapproval by the Compliance Officer.

An individual may only modify a Trading Plan outside of a blackout period and, in any event, when the individual does not possess material nonpublic information. Modifications to and terminations of a Trading Plan are subject to preapproval by the Compliance Officer and modifications of a Trading Plan that change the amount, price, or timing of the purchase or sale of the securities underlying a Trading Plan will trigger a new Cooling-Off Period.

The Company reserves the right to publicly disclose, announce, or respond to inquiries from the media regarding the adoption, modification, or termination of a Trading Plan and non-Rule 10b5-1 trading arrangements, or the execution of transactions made under a Trading Plan. The Company also reserves the right from time to time to suspend, discontinue, or otherwise prohibit transactions under a Trading Plan if the Compliance Officer or the Board of Directors, in its discretion, determines that such suspension, discontinuation, or other prohibition is in the best interests of the Company.

Compliance of a Trading Plan with the terms of Rule 10b5-1 and the execution of transactions pursuant to the Trading Plan are the sole responsibility of the person initiating the Trading Plan, and none of the Company, the Compliance Officer, or the Company's other

employees assumes any liability for any delay in reviewing and/or refusing to approve a Trading Plan submitted for approval, nor the legality or consequences relating to a person entering into, informing the Company of, or trading under, a Trading Plan.

Interpretation, Amendment, and Implementation of this Policy

The Compliance Officer shall have the authority to interpret and update this Policy and all related policies and procedures. In particular, such interpretations and updates of this Policy, as authorized by the Compliance Officer, may include amendments to or departures from the terms of this Policy, to the extent consistent with the general purpose of this Policy and applicable securities laws.

Actions taken by the Company, the Compliance Officer, or any other Company personnel do not constitute legal advice, nor do they insulate you from the consequences of noncompliance with this Policy or with securities laws.

Certification of Compliance

All directors, officers, employees and others subject to this Policy may be asked periodically to certify their compliance with the terms and provisions of this Policy.

Schedule I

Individuals Subject to Trading Blackouts

All directors, section 16 officers, employees and other designated persons (such as temporary workers, contractors and consultants) of the Company.

Schedule II

Individuals Subject to Preclearance Requirement

1. Directors

Name	Title(s)
Robert Piconi	Chief Executive Officer and Director
Theresa Fariello	Director
Larry Paulson	Director
Tom Ertel	Director
Mary Beth Mandanas	Director
Stephanie Unwin	Director
Bill Gross	Director

2. Officers (excluding officers who are also directors)

Name	Title(s)
Michael Beer	Chief Financial Officer
Marco Terruzzin	Chief Product Officer
Christopher Wiese	Chief Operating Officer
Gonca Icoren	Chief People Officer
Brad Eastman	Chief Legal Officer
Laurence Alexander	Chief Marketing Officer
Akshay Ladwa	Chief Engineering Officer
Wes Fuller	Global Head of Sales

List of Subsidiaries

Name of Subsidiary	Country of Incorporation	Percentage Owned
Energy Vault, Inc.	United States (Delaware)	100%
Calistoga Resiliency Center Holdco, LLC	United States (Delaware)	100%
Calistoga Resiliency Center, LLC	United States (Delaware)	100%
Cetus Energy LLC	United States (Delaware)	100%
Cetus Energy, Inc.	United States (Delaware)	85%
Cross Trails Energy Storage Project Holdco, LLC	United States (Delaware)	100%
Cross Trails Energy Storage Project, LLC	United States (Delaware)	100%
Snyder Housing LLC	United States (Texas)	100%
Energy Vault SA	Switzerland	100%
Energy Vault Pty Ltd	Australia	100%
Energy Vault Solutions UK Limited	United Kingdom	100%
Energy Vault Nantong Co., Ltd.	China	100%

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-262720 and 333-273089) and Form S-8 (No. 333-268744, 333-266450 and 333-266402) of Energy Vault Holdings, Inc. (the Company) of our report dated March 31, 2025, relating to the consolidated financial statements, which appears in this Annual Report on Form 10-K.

/s/ BDO USA, P.C.

New York, New York

March 31, 2025

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES OXLEY ACT OF 2002**

I, Robert Piconi, certify that:

1. I have reviewed this annual report on Form 10-K of Energy Vault Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2025

Signature: /s/ Robert Piconi
Title: Co-Founder and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES OXLEY ACT of 2002

I, Michael Beer, certify that:

1. I have reviewed this annual report on Form 10-K of Energy Vault Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2025

Signature: /s/ Michael Beer
 Title: Chief Financial Officer
 (Principal Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert Piconi, Chief Executive Officer of Energy Vault Holdings, Inc. (the “Company”), certify pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. This Annual Report on Form 10-K of the Company for the year ended December 31, 2024 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
2. The information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company, at the dates and for the periods presented in the financial statements included in this Report.

Date: March 31, 2025

Signature: /s/ Robert Piconi
Title: Co-Founder and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael Beer, Chief Financial Officer of Energy Vault Holdings, Inc. (the “Company”), certify pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. This Annual Report on Form 10-K of the Company for the year ended December 31, 2024 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
2. The information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company, at the dates and for the periods presented in the financial statements included in this Report.

Date: March 31, 2025

Signature: /s/ Michael Beer
Title: Chief Financial Officer
(Principal Financial Officer)